

ORDINANCE NO. 3340-C.S.

AN ORDINANCE AMENDING SECTION 8-3.206 OF ARTICLE 2 OF CHAPTER 3 OF TITLE 8 OF THE MODESTO MUNICIPAL CODE RELATING TO CENTRAL PURCHASING B PREFERENCE TO LOCAL MERCHANTS.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 8-3.206 of Article 2 of Chapter 3 of Title 8 of the Modesto Municipal Code is hereby amended to read as follows:

**8-3.206. PREFERENCE TO LOCAL MERCHANTS.**

Preference shall be given to the purchase of supplies, materials, equipment and contractual services from local merchants, quality and price being equal. Local merchants who have a business location within the City and a current City business license shall be granted a two (2) percent bid preference. The two (2) percent bid preference shall be based on the amount of that portion of the bid which is subject to sales tax. This is intended to provide a minimal preference in the award of certain City contracts in order to encourage businesses to move into the City.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

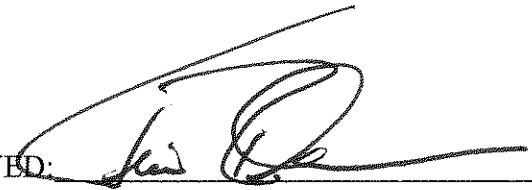
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6<sup>th</sup> day of January, 2004, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



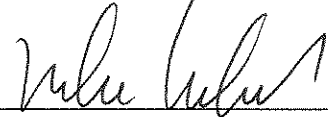
JIM RIDENOUR, Mayor

ATTEST:

By  \_\_\_\_\_  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By  \_\_\_\_\_  
MICHAEL D. MILICH, City Attorney

Ord. No. 3340-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 13<sup>th</sup> day of January, 2004, Councilmember Keating moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: February 12, 2004

ORDINANCE NO. 3341-C.S.

AN ORDINANCE AMENDING SECTIONS 2-1.17 AND 2-1.18 OF CHAPTER 1 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO THE APPOINTMENT OF SPECIAL COMMITTEES AND STANDING COMMITTEES OF THE MODESTO CITY COUNCIL.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Sections 2-1.17 and 2-1.18 of Chapter 1 of Title 2 of the Modesto Municipal Code are hereby amended to read as follows:

**2-1.17. SPECIAL COMMITTEES.**

All special committees shall be appointed or removed by the Mayor.

**2-1.18. STANDING COMMITTEES.**

The standing committees of the Council shall be a Safety and Communities Committee, an Economic Development Committee, a Finance Committee, and an Audit Committee, each of which committees shall consist of three (3) members of the Council appointed by the Mayor. The responsibilities of the Audit Committee shall be established by resolution of the City Council.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of January, 2004, by Councilmember Keating, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

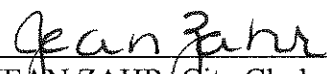
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_

  
JIM RIDENOUR, Mayor

ATTEST:

By  \_\_\_\_\_  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By  \_\_\_\_\_  
MICHAEL D. MILICH, City Attorney

Ord. No. 3341-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27<sup>th</sup> day of January, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_



JEAN ZAHR, City Clerk

Effective Date: February 25, 2004

ORDINANCE NO. 3342 - C.S.

AN ORDINANCE AMENDING SECTION 22-3-9 OF THE ZONING MAP TO REZONE FROM PLANNED DEVELOPMENT ZONE, P-D(454), TO PLANNED DEVELOPMENT ZONE, P-D(564), PROPERTY LOCATED ON THE SOUTHWEST CORNER OF BRIGGSMORE AVENUE AND OAKDALE ROAD. (SOELLING)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 22-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Planned Development Zone, P-D(454), to Planned Development Zone, P-D(564):

P-D(454) to P-D(564)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the Northeast Quarter of Section 22, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

All of Lot 18 in Block 1345, of Eastgate, according to the Official Map thereof, filed in the office of the Recorder of Stanislaus County, California, on August 23, 1989 in Volume 34 of Maps, at Page 29;

Also including the westerly half of Santa Paula Drive, the southerly half of Kendall Avenue, the southerly half of the 60 foot eastbound lane of East Briggsmore Avenue, and the westerly half of Oakdale Road, all being immediately adjacent to the above described property.

~~SECTION 2. USES. The following uses shall be permitted in said~~

~~P-D(564) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if~~

*Amended  
per Ordinance  
No. 3458-CS*

any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Building A, B and E B Office use as permitted in the P-O Zone.
2. Building D B Retail and Office uses as permitted in the C-1 Zone.
- ~~3. Building C B Restaurant use as permitted in the C-1 Zone.~~

SECTION 3. ZONING MAP. Section Map 22-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 13th day of January, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:


By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community & Economic Development  
Department B Planning Division

Ord. No. 3342-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27<sup>th</sup> day of January, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: February 25, 2004

**ORDINANCE NO. 3343-C.S.**

**AN ORDINANCE AMENDING ORDINANCE NO. 3237-C.S. AS AMENDED BY ORDINANCE NO. 3317-C.S. ENTITLED "AN ORDINANCE GRANTING AN EXCLUSIVE TWO-YEAR ADVERTISING SIGN FRANCHISE TO SAFER INTERSECTIONS, INC. FOR THE RIGHT, PRIVILEGE AND PERMISSION TO OPERATE A BATTERY BACK-UP SYSTEM EQUIPMENT DONATION FRANCHISE AND OCCUPY THE PUBLIC RIGHT-OF-WAY AT DESIGNATED LOCATIONS ALONG THE STREETS IN THE CITY OF MODESTO FOR ADVERTISING SIGNS," ALLOWING LARGER SIGNS, AND REQUIRING FRANCHISE TO FURNISH REPLACEMENT ARTWORK/LAMINATE.**

Ordinance No. 3237-C.S. as amended by Ordinance No. 3317-C.S. is hereby amended to read as follows:

**PURPOSE.**

To establish terms, conditions and procedures for granting a Battery Back-up System Equipment Donation Franchise for the exclusive right, privilege and permission to occupy the public right-of-way and to advertise at designated locations along the intersections in the City of Modesto.

**SECTION 1. DEFINITIONS.**

- (a) "Grantee" refers to Safer Intersection, Inc. as the designated donor of a battery backup system placed at various intersections in Modesto, hereinafter called Grantee.
- (b) "The City" means and refers to the City of Modesto.
- (c) "Battery Backup System" or "BBS" refers to a system, as described in Exhibit A, that shall provide reliable emergency power to a traffic signal in the event of power failure or interruption.
- (d) "Designated Intersection" refers to the area where two or more streets cross with traffic signals that both parties have mutually agreed upon for placement of Battery Back-up System equipment or advertising signage.
- (e) "Franchise" means and refers to this ordinance and all of the rights, privileges, obligations, terms, conditions and restrictions set forth herein.

## SECTION 2. SCOPE AND TERM OF FRANCHISE.

- (a) Scope. Grantee shall have the right, privilege and permission to occupy the public right-of-way to advertise business names at designated locations along the intersections in the City of Modesto in accordance with this Franchise. The City of Modesto will install and maintain battery back-up system equipment donated in accordance with this Franchise.
- (b) Term/Termination for Convenience. The term of this Franchise will last three years. It shall commence on January 1, 2004, and shall end no later than January 1, 2007. The City shall have the right to terminate the Franchise for convenience at any time by providing Grantee written notice of such termination at least ninety (90) days in advance of the date of termination. Notice of termination of Franchise shall be in writing and may be served by certified United States mail. Service of notice of termination of Franchise for convenience shall be deemed complete upon the mailing of the notice to the Grantee – Safer Intersections, c/o James Reed, 2501 Stone Crop Lane, Modesto, CA 95355. Grantee is responsible for notifying the City in writing of any change of address. Failure of Grantee to give City written notice of change of address shall not toll or otherwise prevent the commencement of the ninety (90) day notice period. If either Grantee or City terminates this Franchise, any accompanying signs in place prior to the termination will remain in place for a two-year period of time or less, which is at the discretion of the City Manager or his designee.

SECTION 3. FRANCHISE FEE. For the exclusive rights and privileges set forth herein, Grantee shall donate the battery back-up system equipment. Said donation shall be deemed just and adequate compensation for granting of this Franchise. Grantee is required to donate a minimum of one (1) BBS in order to fulfill the obligations under this agreement. In the event there is a failure to deliver on at least one (1) battery back-up system equipment, the Grantee agrees to pay the City the total sum of \$500 as just and adequate compensation for granting of this Franchise (See Section 19).

SECTION 4. ADVERTISING PROHIBITED. No person(s) shall install or maintain a battery back-up system or advertise along any designated intersection in the City except in accordance with this Franchise.

SECTION 5. SIGNS. Advertising signs, in conjunction with each donation, will be provided by the Grantee to the City for installation at designated intersections. Within the Downtown Improvement District, the signs will not exceed twenty-four (24) inches by thirty (30) inches (24"x30") in size and will consist of a yellow to lime green background with the heading "watch for pedestrians". Outside of the Downtown Improvement District boundary, signs will not exceed thirty (30) inches by thirty-six (36) inches (30" x 36") in size and will consist of a yellow to lime green background with the heading "watch for pedestrians". The sign will advertise the business name and/or logo of the donor on a white inlet background. Where two businesses may sponsor a battery back-up system equipment donation jointly, their business names and/or logos will be placed on the same sign. The sign will feature the logos of the City of Modesto and Safer Intersections in the lower left-hand and lower right-hand corners of each sign. All signs will be required to meet the advertising conditions as described in Section 8 of this Agreement.

SECTION 6. SIGN PRINTING SCREENS. Grantee shall be responsible for the safe storage of the sign printing screens, furnished by Grantee to the City, for the duration of this franchise.

SECTION 7. MAINTENANCE OF SIGNS. The Grantee will regularly monitor the condition of signs on which advertising will be placed and is responsible for notifying the City when a sign has been damaged or is in need of maintenance. The City

is responsible for replacing damaged signs and agrees that the Grantee will provide, at no cost to the City, the necessary replacement artwork and laminate. The City will, at no cost to the Grantee, provide the replacement sign blank and installation. The City reserves the right to remove any such signs that pose a safety hazard, but will not inspect, repair, or maintain such signs on a regular basis.

SECTION 8. ADVERTISING SIGN RESTRICTIONS. Grantee shall utilize only the front surface of the intersection sign for the placement of printed matter. No other material whatsoever shall be permitted on any portion of the intersection sign except as specified by City. Printed matter or signs shall be placed in accordance with the following conditions:

- (a) Grantee shall submit to the City Manager or his designee, copies of all ads proposed to be placed on intersection sign for placement or replacement approval.
- (b) Should City, in its sole discretion, determine any advertising placed on any intersection sign to be improper, offensive or likely to interfere with, mislead, or distract traffic or conflict with any traffic control system, City shall remove all such material within twenty-four (24) hours and serve written removal notice to Grantee with cause for removal.
- (c) Examples of words included in the prohibition stated in the next preceding paragraph are the words, "Stop," "Look," "Drive-in," "Danger," but this list is not inclusive.
- (d) No advertising or signs or devices shall be permitted in conjunction with BBS advertising which comprise rotating, revolving or flashing lighting devices or any other moving parts.
- (e) No advertising for beverages containing alcohol, tobacco, or any business regulated by Modesto Municipal Code Sections 5-9.101 through 5-9.406 shall be permitted.
- (f) No advertising that, in the sole opinion of the City, contains any depiction of an act of an immoral, violent, or debasing nature, or

otherwise not in keeping with the standards and surroundings of the intersection, shall be permitted.

- (g) No advertising for products or services on the signage shall be permitted.
- (h) No advertising that discriminates based on gender, race, ethnic origin, or other factors shall be permitted.
- (i) No advertising that is false, misleading, deceptive or clearly defamatory shall be permitted.

#### SECTION 9. PLACEMENT OF SIGNS BEARING ADVERTISING.

Grantee shall have the right and privilege, subject to prior city approval, to choose among designated intersections for the placement of the accompanying advertising signs related to this Franchise. Subject to the specifications and limitations contained herein, Grantee shall have the right to place up to four (4) signs for each battery back-up system donated at designated intersections, or such other place as the City and Grantee may agree. No advertising signs related to this Franchise, will be installed or maintained by the City's Operations and Maintenance Department without the express written approval of the proposed location by the City Manager or his designee.

SECTION 10. REMOVAL OF SIGNS BEARING ADVERTISING. No advertising signs related to this Franchise, after being installed, shall be removed by Grantee at any time except with the express written approval of the City Manager or his designee. The City Manager or his designee may, for a cause considered by him/her reasonable, order the City's Operations and Maintenance Department to move or remove any advertising sign.

SECTION 11. LEASE OF SIGN POLES/PAYMENT. For the exclusive rights and privileges set forth herein, Grantee shall lease sign poles from the City for a

period no greater than two (2) years. For the right and privilege of leasing the sign poles, Grantee prior to January 1, 2002, shall pay to the City One Dollar and no/100ths dollars (\$1.00), which sum shall thereafter be pre-paid to the City by January 1 each year for the duration of the franchise. Should the City terminate this Franchise, the City shall not reimburse the lease payment to Grantee.

SECTION 12. CITY USE OF ADVERTISING SIGNS. Through December 31, 2006, the Grantee shall make available to City, at no cost to City, a maximum of twenty (20) signs – four (4) signs at five (5) different intersections selected by the City Manager or his designee – at no cost. Said twenty (20) signs will be used for the purpose of displaying printed messages selected by City to promote City programs or messages determined by City to be of importance to the public. City shall have the sole ability to select said twenty (20) locations. City shall be responsible for the cost of printing sign screens or otherwise applying its printed message to the signs it utilizes and shall have the ability to utilize the sign advertisement vendor of its choice. City shall be responsible for installing said City signs. Grantee shall have the ability to request City signs be removed from locations that may subsequently be purchased by advertisers but shall relocate displaced City signs to other locations selected by City.

SECTION 13. BATTERY BACK-UP SYSTEM SPECIFICATIONS. The battery back-up systems to be donated shall be designed for outdoor applications in accordance with the Caltrans Transportation Electrical Equipment Specifications set forth in Exhibit “A”.

SECTION 14. PLACEMENT OF BATTERY BACKUP SYSTEMS. The City, in its sole discretion, will decide the intersection locations for placement of the

battery back-up systems. The Battery Back-up System equipment shall be placed, maintained, relocated and removed as required by the City Manager or his designee.

SECTION 15. OWNERSHIP/REMOVAL OF BATTERY BACK-UP

SYSTEMS. Once donated, the battery back-up systems become the sole property of the City. No battery back-up system equipment after being installed at the intersections in the City shall be removed by the Grantee.

SECTION 16. WARRANTY. Grantee will provide in the form of a pass through from the manufacturer any and all warranties on the battery back-up system equipment. Warranty will commence on the date of installation, not on the date of donation.

SECTION 17. INSURANCE. The Grantee shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the City as may be required by the City Clerk of the City. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the City by registered mail, return receipt requested, for all of the following stated insurance policies.

- (a) General Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property damage or \$1,000,000 combined single limit. This insurance shall indicate on the certificate of insurance the following coverages and indicate the policy aggregate limit applying to: premises and operations; broad form contractual; independent contractors and subcontractors; products and completed operations; and/or professional liability.
- (b) Automobile Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for bodily injury and \$100,000 for property

damage or \$1,000,000 combined single limit. This insurance shall cover any automobile for bodily injury and property damage.

- (c) Advertiser's Liability insurance with a minimum limit of liability per occurrence of \$1,000,000 for legal liability; damages resulting from libel, slander, or defamation; infringement of copyright, title or slogan; and invasion of rights to privacy.

If at any time any of said policies shall be unsatisfactory to the City, as to form or substance or if a company issuing such policy shall be unsatisfactory to the City, the Grantee shall promptly obtain a new policy, submit the same to the Risk Manager for approval and submit a certificate thereof as hereinabove provided. Upon failure of the Grantee to furnish, deliver or maintain such insurance and certificates as above provided, this Franchise, at the election of the City, may be forthwith declared suspended, or terminated. Failure of the Grantee to obtain and/or maintain any required insurance shall not relieve the Grantee from any liability under this Franchise, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the Grantee concerning indemnification. The City, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the City, its agents, officers, employees, and volunteers for losses arising from work performed by Grantee for the City. The Grantee's insurance policy(ies) shall include a provision that the coverage is primary as respects the City; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager.

SECTION 18. INDEMNITY AND HOLD HARMLESS. The Grantee shall hold the City, its agents, officers, employees, and volunteers, harmless from and save, defend and indemnify them against any and all claims, losses, liabilities and damages from every cause, including but not limited to injury to person or property or wrongful death, with the indemnity to include reasonable attorney's fees, and all costs and expenses, arising directly or indirectly out of any act or omission of Grantee, relating to or during the performance of its obligations under this Franchise.

SECTION 19. PERFORMANCE BOND/SECURITY. The Grantee shall post a performance bond or other surety approved by City's City Attorney in the sum of Five Hundred and no/100ths to the City guaranteeing its performance of the conditions of this franchise and stating that the said sum shall be forfeited to the City as liquidated damages in the event that Grantee shall fail to perform the conditions of its franchise. Said bond shall be furnished by a surety company authorized to do business in the State of California and shall be approved by the City Attorney. (Cash, irrevocable letter of credit, or a certified cashiers check may be substituted for a .).

SECTION 20. DEFAULT. In the event that either party shall fail or neglect to do or perform each and all of the terms and conditions of this franchise on his or its part to be performed, the aggrieved party may give the party in default thirty (30) days' written notice to correct the conditions in default, and if the party in default refuses or neglects to make such corrections within the thirty (30) day period, the aggrieved party may terminate this franchise. Should Grantee herein default, Grantee agrees to leave all signs in the positions approved per Section 10 herein.

Should Grantee default, and at all times throughout the term of this franchise ordinance, and notwithstanding City's election at any time to exercise any particular remedy described herein or otherwise available in law or equity, City hereby reserves and retains the right to elect and exercise any and all remedies, whether simultaneously or consecutively, described herein or otherwise available in law and equity.

SECTION 21. INSPECTION OF BOOKS. The City shall have the right at all reasonable times to examine all books, papers, and records of the Grantee for the purpose of verifying the statements or reports required and for any other purpose whatsoever connected with this franchise.

SECTION 22. DEFACING ADVERTISING SIGNS PROHIBITED. No person shall tamper with or deface any advertising sign placed under the Franchise granted by this ordinance.

SECTION 23. PENALTY FOR VIOLATION OF SECTION 22. It shall be unlawful for any person to violate the provisions of SECTION 22 of this franchise, or to cause, permit or suffer the same to be done; and any person who does shall be deemed guilty of a misdemeanor, and upon conviction of any such violation, such person shall be punished by a fine of not more than One Thousand and no/100ths Dollars (\$1,000.00) or by imprisonment for not more than one year or by both such fine and imprisonment.

SECTION 24. TRANSFER OR ASSIGNMENT. This franchise may not be sold, transferred, assigned or otherwise disposed of, in whole or in part, without the prior written consent of the Modesto City Council. The Council may grant or deny any such request and may impose such conditions as it may deem to be in the public interest. Any attempted disposition made without such consent shall be void.

SECTION 25. EFFECTIVE DATE. This ordinance shall become effective thirty (30) days after its final passage and adoption provided that Grantee, prior to said effective date, shall have filed with the City Clerk written acceptance thereof and an agreement to be bound by and comply with all of the requirements thereof, and delivers to the City Clerk the and insurance policies required to be furnished pursuant to the provisions of Sections 17 and 19 thereof.

SECTION 26. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

SECTION 27. TAX PROVISION. Grantee shall be responsible for prompt payment of all tax liabilities created by operation of this franchise including but not limited to, a possessory interest tax levied by Stanislaus County. Grantee's continued failure to pay such tax after written notice from City shall constitute grounds for revocation of this franchise.

SECTION 28. PROTESTS MAY BE FILED. At any time not later than the hour set for the hearing, any person interested may make written protest stating objections against the granting of such franchise. Such protests must be signed by the protestant and be delivered to the City Clerk. (Sec. 6, Ord. 1048-N.S.)

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 27th day of January, 2004, by Councilmember O'Bryant, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant,  
Mayor Ridenour


NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_

  
JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

By   
BEN E. BANKARD, Acting Risk Manager

ACCEPTANCE OF FRANCHISE

Safer Intersections, Inc. of Modesto, California, located within Stanislaus County, does hereby agree with and accept all of the terms and conditions set forth in Ordinance No. 3343-C.S., introduced by the Council of the City of Modesto on January 27, 2004, granting a three-year Battery Back-up System Equipment Donation Franchise extension.

Dated: 02-09-04.

SAFER INTERSECTIONS, INC.

By: James D. Reed

Title: President

By: \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich  
MICHAEL D. MILICH, City Attorney

\*\*\*\*\*  
CERTIFICATE OF CLERK

I hereby certify that the foregoing ACCEPTANCE OF FRANCHISE was received by me at the hour of 1 o'clock p.m. on the 23<sup>rd</sup> day of February, 2004.

Jean Zahr  
JEAN ZAHR, City Clerk

Ord. No. 3343-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27<sup>th</sup> day of January, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR, City Clerk

Effective Date: March 3, 2004

**ORDINANCE NO. 3344-C.S.**

**AN ORDINANCE AMENDING SECTION 3-2.1401.1  
OF ARTICLE 14 OF CHAPTER 2 OF TITLE 3 OF  
THE MODESTO MUNICIPAL CODE RELATING  
TO SPEED LIMITS.**

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 3-2.1401.1 of Article 14 of Chapter 2 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

**3-2.1401.1. CHANGE IN SPEED LIMITS SET BY STATE LAW: FOR PURPOSE OF ENFORCEMENT USING RADAR OR OTHER ELECTRONIC DEVICE.**

By authority of, and upon the basis of engineering and traffic surveys conducted pursuant to Vehicle Code and the Traffic Manual of the Department of Transportation, it is determined that the prima facie speed limits which follow would facilitate the orderly movement of vehicular traffic and would be reasonable and safe.

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>	<u>DATE SURVEYED</u>
BANGS AVENUE, between Dale Road and McHenry Avenue	45 miles per hour	September 4, 2000
BLUE GUM AVENUE, between Morse Road and Carpenter Road	35 miles per hour	March 19, 2003
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	May 6, 2003
BRIGGSMORE AVENUE, between Tully Road and McHenry Avenue	45 miles per hour	September 4, 2000
BRIGGSMORE AVENUE, westbound between McHenry Avenue and Coffee Road	45 miles per hour	May 6, 2003

BRIGGSMORE AVENUE, eastbound between McHenry Avenue and Coffee Road	45 miles per hour	May 10, 2002
BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	May 6, 2003
BRIGGSMORE AVENUE, between Oakdale Road and Claus Road	50 miles her hour	February 26, 2003
BRIGGSMORE AVENUE, between Claus Road and Santa Fe Railroad Tracks	45 miles per hour	May 22, 2002
BRIGHTON AVENUE, between Coffee Road and Locke Road	30 miles per hour	May 10, 2002
CALIFORNIA AVENUE, between Carpenter Road and Martin Luther King Drive	30 miles per hour	July 11, 2002
CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue	40 miles per hour	February 21, 2003
CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	September 4, 2000
CARPENTER ROAD, between Maze Boulevard and Paradise Road	50 miles per hour	June 15, 1999
CARVER ROAD, between Bangs Avenue and Pelandale Avenue	40 miles per hour	September 4, 2000
CARVER ROAD, between Pelandale Avenue and Brixton Lane	35 miles per hour	May 10, 2002
CARVER ROAD, between Brixton Lane and Briggsmore Avenue	35 miles per hour	May 10, 2002

CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	35 miles per hour	May 10, 2002
CARVER ROAD, between Orangeburg Avenue and 9th Street	35 miles per hour	May 10, 2002
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	May 17, 2002
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	May 23, 2002
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	45 miles per hour	May 23, 2002
CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	September 4, 2000
COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	40 miles per hour	April 4, 2000
COFFEE ROAD, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
COFFEE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	May 7, 2003
COFFEE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	February 21, 2003
COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	February 21, 2003
COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	February 21, 2003
COLLEGE AVENUE, between Princeton Avenue and Needham Avenue	25 miles per hour	February 21, 2003

CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard	35 miles per hour	May 7, 2003
CROWS LANDING ROAD, between 7th Street and Hatch Road	35 miles per hour	May 7, 2003
CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue	35 miles per hour	May 7, 2003
DALE ROAD, between Pelandale Avenue and Snyder Avenue	40 miles per hour	September 4, 2000
DALE ROAD, between Snyder Avenue and Veneman Avenue	40 miles per hour	May 16, 2002
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	May 16, 2002
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive	30 miles per hour	June 18, 2002
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	40 miles per hour	May 7, 2003
EMERALD AVENUE, between Maze Boulevard and California Avenue	30 miles per hour	May 28, 2002
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	30 miles per hour	May 21, 2002
FLOYD AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	July 11, 2002
FLOYD AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002
FLOYD AVENUE, between Oakdale Road and Roselle Avenue	35 miles per hour	July 10, 2002

FLOYD AVENUE, between Roselle Avenue and Fine Avenue	35 miles per hour	July 10, 2002
GRANGER AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	May 6, 2003
GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue	35 miles per hour	May 6, 2003
H STREET, between Washington Street and 5th Street	30 miles per hour	July 3, 2002
HATCH ROAD, between Carpenter Road and Crows Landing Road	45 miles per hour	September 4, 2000
JEFFERSON STREET, between Maze Boulevard and Paradise Road	30 miles per hour	February 19, 2004
KANSAS AVENUE, between Morse Road and Rosemore Avenue	40 miles per hour	May 6, 2003
KANSAS AVENUE, between Rosemore Avenue and Carpenter Road	40 miles per hour	May 6, 2003
KANSAS AVENUE, between Carpenter Road and Emerald Avenue	35 miles per hour	May 6, 2003
KANSAS AVENUE, between Emerald Avenue and Ninth Street	35 miles per hour	May 6, 2003
LA LOMA AVENUE, between Burney Street and Yosemite Boulevard	30 miles per hour	September 4, 2000
LAKEWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	February 26, 2003
LINCOLN AVENUE, between Dry Creek and Yosemite Boulevard	35 miles per hour	September 4, 2000

MABLE AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002
MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road	30 miles per hour	June 13, 2002
MERLE AVENUE, between Oakdale Road and Roselle Avenue	30 miles per hour	February 26, 2003
MERLE AVENUE, between Roselle Avenue and Claus Road	35 miles per hour	May 13, 2003
MILLER AVENUE, between La Loma Avenue and El Vista Avenue	35 miles per hour	May 7, 2003
MITCHELL ROAD, between Finch Road and the southerly City limits	50 miles per hour	May 7, 2003
MORRIS AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	May 24, 2002
MORSE ROAD, between Blue Gum Avenue and Kansas Avenue	40 miles per hour	May 24, 2002
MT. VERNON DRIVE, between Prescott Road and College Avenue	30 miles per hour	June 23, 1999
NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue	35 miles per hour	June 13, 2002
NEEDHAM STREET, between 9th Street and L Street	35 miles per hour	June 17, 2002
NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	May 6, 2003
OAKDALE ROAD, between 1300 feet north of Mable Avenue and Sylvan Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue	45 miles per hour	August 29, 2000

OAKDALE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	May 7, 2003
OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	May 7, 2003
ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	May 21, 2002
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	May 23, 2002
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	May 22, 2002
PARADISE ROAD, between Carpenter Road and Martin Luther King Drive	35 miles per hour	May 28, 2002
PARADISE ROAD, between Martin Luther King Drive and Washington Street	30 miles per hour	July 3, 2002
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	May 16, 2002
PELANDALE AVENUE, between Dale Road and Prescott Road	50 miles per hour	August 29, 2000

PELANDALE AVENUE, between Prescott Road and McHenry Avenue	50 miles per hour	June 18, 2002
PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	May 17, 2002
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	May 17, 2002
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	May 17, 2002
RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard	30 miles per hour	August 30, 2000
ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	30 miles per hour	July 11, 2002
ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	30 miles per hour	July 11, 2002
ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	June 13, 2002
ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 24, 2002
ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue	30 miles per hour	June 13, 2002
ROSELLE AVENUE, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue	45 miles per hour	November 4, 2000

ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	35 miles per hour	August 30, 2000
ROUSE AVENUE, between Colorado Avenue and Neece Drive	30 miles per hour	June 13, 2002
RUMBLE ROAD, between Sisk Road and Conant Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Conant Avenue and Tully Road	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Tully Road and McHenry Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between McHenry Avenue and Coffee Road	30 miles per hour	May 17, 2002
SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive	30 miles per hour	November 4, 2000
SCENIC DRIVE, between Burney Street and Coffee Road	35 miles per hour	June 17, 2002
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	June 17, 2002
SIERRA DRIVE, between G Street and 7th Street	25 miles per hour	January 23, 2004

SISK ROAD, between Pelandale Avenue and Vintage Drive	45 miles per hour	June 14, 1999
SISK ROAD, between Vintage Drive and Standiford Avenue	45 miles per hour	June 14, 1999
SISK ROAD, between Standiford Avenue and Briggsmore Avenue	45 miles per hour	August 29, 2000
SNYDER AVENUE, between Dale Road and Prescott Road	30 miles per hour	May 16, 2002
SNYDER AVENUE, between Prescott Road and Tully Road	30 miles per hour	May 16, 2002
STANDIFORD AVENUE, between Sisk Road and Prescott Road	45 miles per hour	May 13, 2003
STANDIFORD AVENUE, between Prescott Road and Tully Road	40 miles per hour	August 29, 2000
STANDIFORD AVENUE, between Tully Road and McHenry Avenue	40 miles per hour	May 7, 2003
SUNRISE AVENUE, between Floyd Avenue and Lucern Avenue	30 miles per hour	May 24, 2002
SUTTER AVENUE, between Paradise Road and Robertson Road	30 miles per hour	May 7, 2003
SYLVAN AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 7, 2003
SYLVAN AVENUE, between Coffee Road and Oakdale Road	40 miles per hour	February 7, 2001
SYLVAN AVENUE, between Oakdale Road and Roselle Avenue	40 miles per hour	February 27, 2003
SYLVAN AVENUE, between Roselle Avenue and Claus Road	45 miles per hour	February 27, 2003

TENAYA DRIVE, between Empire Avenue and the easterly city limit on Tenaya Drive	30 miles per hour	June 18, 2002
TULLY ROAD, between Bangs Avenue and Standiford Avenue	45 miles per hour	May 21, 2002
TULLY ROAD, between Standiford Avenue and Briggsmore Avenue	35 miles per hour	May 21, 2002
TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	June 13, 2002
TUOLUMNE BOULEVARD, between Paradise Road and 7th Street	35 miles per hour	May 28, 2002
UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	August 29, 2000
VENEMAN AVENUE, between Dale Road and Regency Park Drive	30 miles per hour	July 10, 2002
VIRGINIA AVENUE, between Roseburg Avenue and Needham Street	30 miles per hour	May 24, 2002
WHITMORE AVENUE, between Ustick Road and Crows Landing Road	45 miles per hour	June 18, 2002
WHITMORE AVENUE, between Crows Landing Road and Morgan Road	40 miles per hour	June 18, 2002
WOODLAND AVENUE, between Morse Road and Carpenter Road	30 miles per hour	July 11, 2002
WOODLAND AVENUE, between Carpenter Road and 9th Street	30 miles per hour	June 13, 2002
WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 21, 2002

5TH STREET, between L Street and Sierra Drive	25 miles per hour	May 28, 2002
6TH STREET, between M Street and Sierra Drive	30 miles per hour	May 28, 2002
7TH STREET BRIDGE, between B Street and River Road	30 miles per hour	August 30, 2000
9TH STREET, between Carpenter Road and Tully Road	45 miles per hour	June 13, 2002
9TH STREET, between Tully Road and L Street	35 miles per hour	May 23, 2002
9TH STREET, between D Street and Morton Boulevard	30 miles per hour	November 4, 2000

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 23rd day of March, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3344-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 6<sup>th</sup> day of April, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST: 

JEAN ZAHR, City Clerk

Effective Date: May 6, 2004

ORDINANCE NO. 3345-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MODESTO AUTHORIZING THE LEVY OF SPECIAL TAXES  
WITHIN CITY OF MODESTO COMMUNITY FACILITIES  
DISTRICT NO. 2004-1 (VILLAGE ONE #2)

The Council of the City of Modesto does ordain as follows:

WHEREAS, the City Council of the City of Modesto, (the "Council"), did, on March 2, 2004, adopt its Resolution No. 2004-127 (the "Resolution of Intention to Establish the District") stating its intention to form City of Modesto Community Facilities District No. 2004-1 of the City of Modesto (the "District") pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 (commencing with Section 53311) of the California Government Code, commonly known as the "Mello-Roos Community Facilities Act of 1982" (the "Act"); and

WHEREAS, the Council did, on March 2, 2004, also adopt its Resolution No. 2004-1 (the "Resolution of Intention to Incur Bonded Indebtedness") stating its intention to incur bonded indebtedness in an amount not to exceed \$75,000,000 within the District, for the purpose of financing the costs of certain public facilities (the "Facilities") specified in the Resolution of Intention to Establish the District; and

WHEREAS, notice was published as required by law relative to the intention of this Council to form the District and to incur the bonded indebtedness; and

WHEREAS, this Council held the noticed public hearings as required by law (1) to determine whether it should proceed with the formation of the District and authorize, subject to a vote of the qualified electors, the levy of the special taxes within the District to pay debt service on bonds to be issued to finance the Facilities, to pay for the Facilities, to pay any authorized costs and expenses related thereto, and to pay for certain services (the "Services"), all

as described in the Resolution of Intention to Establish the District, and (2) on the proposal to incur the bonded indebtedness, subject to a vote of the qualified electors, as described in the Resolution of Intention to Incur Bonded Indebtedness; and

WHEREAS, at the hearings all persons desiring to be heard on all matters pertaining to the formation of the District, the levy of the special taxes, the proposed bonded indebtedness, and all other matters set forth in the Resolution of Intention to Establish the District and the Resolution of Intention to Incur Bonded Indebtedness, were heard and considered and full and fair hearings were held thereon; and

WHEREAS, following the hearings, this Council did, on April 6, 2004, adopt its Resolution No. 2004-199 (the "Resolution of Formation") which established the District, determined the validity of prior proceedings relative to the formation of the District, authorized the levy of the special taxes within the District subject to the vote of the qualified electors, called an election within the District for April 6, 2004, on the propositions of levying the special taxes and establishing an appropriations limit for the District, and ordered the election consolidated with the election at which the proposition of incurring the bonded indebtedness is submitted to the qualified electors of the District; and

WHEREAS, following the hearing, this Council did, on April 6, 2004, also adopt its Resolution No. 2004-200 (the "Resolution to Incur Bonded Indebtedness") which determined the necessity of incurring bonded indebtedness in an amount not to exceed \$75,000,000, and called an election within the District for April 6, 2004, on the proposition of incurring the bonded indebtedness; and

WHEREAS, on April 6, 2004, in accordance with the Resolution of Formation and the Resolution to Incur Bonded Indebtedness, a consolidated election was held within the

District at which the qualified electors approved by more than a two-thirds vote the propositions of levying the special taxes, establishing the appropriations limit, and incurring the bonded indebtedness;

NOW, THEREFORE, the City Council of the City of Modesto DOES ORDAIN as follows:

SECTION 1. The above recitals are true and correct and this Council so finds and determines.

SECTION 2. By the passage of this Ordinance, this Council authorizes and levies the special taxes within the District pursuant to Sections 53328 and 53340 of the Act, at the rates and in accordance with the method of apportionment set forth in Exhibit A hereto (the "Rate and Method of Apportionment"). Each of the components of the special taxes (being the One-Time Facilities Special Tax, the Annual Facilities Special Tax, and the Annual Maintenance Special Tax, all as defined in Exhibit A) is levied commencing in Fiscal Year 2004-05, and in each Fiscal Year thereafter until the date at which such component of the special taxes may no longer be validly levied, which, in the case of the Annual Facilities Tax , is after Fiscal Year 2060-61.

SECTION 3. The District Administrator is authorized and directed each Fiscal Year to determine the special taxes to be levied for the next ensuing Fiscal Year for each parcel of real property within the District, in the manner and as provided in the Rate and Method of Apportionment. The District Administrator shall deliver a certified copy of the Ordinance to the Auditor - Controller of the County of Stanislaus, and for each year, commencing Fiscal Year 2004-05 for which the special taxes will be validly levied, appropriate documentation related to the placement of such special taxes on the Stanislaus County tax roll.

SECTION 4. Properties or entities of the State, federal or local governments are exempt from the levy of the special taxes to the extent set forth in the Rate and Method of Apportionment. In no event shall the special taxes be levied on any parcel within the District in excess of the maximum taxes specified in the Rate and Method of Apportionment.

SECTION 5. All of the collections of the special taxes shall be used as provided for in the Act and the Resolution of Formation.

SECTION 6. The Annual Facilities Special Tax and the Annual Maintenance Special Tax shall be collected on the secured real property tax roll in the same manner as ordinary *ad valorem* taxes are collected. These special taxes shall have the same lien priority, and be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for *ad valorem* taxes. In addition, the provisions of Section 53356.1 of the Act shall apply to delinquent tax payments of those special taxes. The District Administrator is authorized and directed to provide all necessary information to the Treasurer-Tax Collector of Stanislaus County and to otherwise take all actions necessary in order to effect proper billing and collection of these special taxes, so that these special taxes are levied and collected in sufficient amounts and at times necessary to satisfy the financial obligations of the District in each Fiscal Year.

Notwithstanding the foregoing, the District Administrator may collect one or more installments of such special taxes by means of direct billing of the property owners within the District if, in the judgment of such officer, such means of collection will reduce the burden of administering the District or is otherwise appropriate in the circumstances. In such event, those special taxes will become delinquent if not paid when due as set forth in any such billing to the property owners.

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any residential or non-residential structure on Taxable Property within the District, and shall be immediately delinquent if not paid.

SECTION 7. If for any reason any portion of this Ordinance is found to be invalid or any component of the special taxes is found to be inapplicable to any particular parcel within the District, by a court of competent jurisdiction, the balance of this Ordinance and the application of the other components of the special taxes to that parcel, and the application of the special taxes to the remaining parcels within the District, shall not be affected.

SECTION 8. This Ordinance shall be effective after thirty (30) days from its final passage and adoption.

SECTION 9. At least two (2) days prior to its final adoption, copies of this Ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this Ordinance, the date of its introduction and the places where this Ordinance is posted.

\* \* \* \* \*

The foregoing Ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6<sup>th</sup> day of April, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3345-C.S.

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27<sup>th</sup> day of April, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR, City Clerk

Effective Date: May 27, 2004

## EXHIBIT A

### CITY OF MODESTO COMMUNITY FACILITIES DISTRICT NO. 2004-1 (VILLAGE ONE #2)

#### RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAXES

Special Taxes applicable to each Assessor's Parcel in Community Facilities District No. 2004-1 (Village One #2) [herein "CFD No. 2004-1" or "the CFD"] shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2004-1, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2004-1 unless a separate Rate and Method of Apportionment is adopted for the annexation area.

#### A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

**"Acre" or "Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other Development Plan.

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

**"Administrative Expenses"** means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City carrying out its duties with respect to CFD No. 2004-1 and the Bonds, including, but not limited to, levying and collecting the Special Taxes, the fees and expenses of legal counsel, charges levied by the County Auditor's Office, Tax Collector's Office, and/or Treasurer's Office, costs related to annexing property into the CFD, costs related to property owner inquiries regarding the Special Taxes, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Taxes, and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

**"Administrator"** means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Taxes.

**"Annual Facilities Special Tax"** means a special tax levied in any Fiscal Year to pay the Annual Facilities Special Tax Requirement, as defined below.

**“Annual Facilities Special Tax Requirement”** means the amount necessary in any Fiscal Year (i) to pay principal and interest, including scheduled sinking fund payments, on Bonds, (ii) pay administrative expenses of CFD No. 2004-1 that have not been included in the Annual Maintenance Special Tax Requirement for the Fiscal Year, (iii) to create or replenish reserve funds, (iv) to cure any delinquencies in the payment of principal or interest on indebtedness of CFD No. 2004-1 which have occurred in the prior Fiscal Year or (based on delinquencies in the payment of the Annual Facilities Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected, and (v) to construct or acquire Authorized Facilities. The amounts referred to in clauses (i) and (iii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to a Bond indenture, Bond resolution, or other legal document that sets forth these terms; (ii) proceeds received by CFD No. 2004-1 from the collection of penalties associated with delinquent Annual Facilities Special Taxes; and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

**“Annual Maintenance Special Tax”** means a special tax levied in any Fiscal Year to pay the Maintenance Special Tax Requirement, as defined below.

**“Annual Maintenance Special Tax Requirement”** means that amount necessary in any Fiscal Year to (i) pay for Authorized Services, (ii) pay administrative expenses of CFD No. 2004-1 that have not been included in the Annual Facilities Special Tax Requirement for the Fiscal Year, and (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year.

**“Assessor’s Parcel”** or **“Parcel”** means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

**“Assessor’s Parcel Map”** means an official map of the County Assessor designating parcels by Assessor’s Parcel number.

**“Authorized Facilities”** means those facilities that are authorized to be funded by CFD No. 2004-1.

**“Authorized Services”** means those services that are authorized to be funded by CFD No. 2004-1.

**“Bonds”** means bonds or other debt (as defined in the Act), whether in one or more series, issued, insured or assumed by CFD No. 2004-1 related to Authorized Facilities.

**“Capitalized Interest”** means funds in any capitalized interest account available to pay debt service on Bonds.

**“CFD Formation”** means the date on which the Resolution of Formation to form CFD No. 2004-1 was adopted by the City Council.

**“City”** means the City of Modesto.

**“City Council”** means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2004-1.

**“Commercial Property”** means all Parcels in CFD No. 2004-1 for which building permits have been or may be issued for construction of a commercial building based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.

**“County”** means the County of Stanislaus.

**“Developed Property”** means, in any Fiscal Year, the following:

*For purposes of levying the Annual Maintenance Special Tax, “Developed Property” means:*

- for Low Density Residential Property and Village Residential Property, all Parcels for which a Final Map was recorded prior to June 30 of the preceding Fiscal Year but not prior to June 30, 2002,
- for Multi-Family Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year, and
- for Commercial Property and Industrial Property, all Parcels for which a building permit for construction, reconstruction or expansion of a building structure was issued prior to June 30 of the preceding Fiscal Year. Notwithstanding the foregoing, Parcels of Commercial Property or Industrial Property on which a vacant building is located that cannot be occupied without demolition or reconstruction of the building shall not be categorized as Developed Property until a permit is issued for construction of a new building or reconstruction of the existing building.

*For purposes of levying the Annual Facilities Special Tax, “Developed Property” means:*

- for Low Density Residential Property and Village Residential Property, all Parcels for which a building permit for construction, or reconstruction of a unit was issued prior to June 30 of the preceding Fiscal Year but not prior to June 30, 2002,
- for Multi-Family Attached Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year, and
- for Commercial Property and Industrial Property, all Parcels for which a building permit for construction, reconstruction or expansion of a building structure was issued prior to June 30 of the preceding Fiscal Year. Notwithstanding the foregoing, Parcels of Commercial Property or Industrial Property on which a vacant building is located that cannot be occupied without demolition or reconstruction of the building shall not be categorized as Developed Property

until a permit is issued for construction of a new building or reconstruction of the existing building.

**“Expected Land Uses”** means the Net Taxable Acreage of each Land Use Class expected on an Original Parcel in CFD No. 2004-1 based on reference to the Expected Land Use Map. The Expected Land Uses for each Original Parcel in the CFD at the time of CFD Formation, and the corresponding Maximum Special Tax for each Parcel, are reflected in Attachment 2, which will be updated with each annexation of property into CFD No. 2004-1.

**“Expected Land Use Map”** means the map entitled “Village One Zoning of Unvested Properties” which is on file with the CFD Administrator at the City and the City Clerk and which identifies the Expected Land Uses on all Parcels within the Village One Specific Plan that either (i) are in CFD No. 2004-1 at CFD Formation, or (ii) may be annexed into the CFD in future Fiscal Years. The Expected Land Use Map may be updated in future years to add property within the Village One Specific Plan that was vested to develop when the map was prepared and, therefore, was not included in the map but subsequently has its vesting expire or for any other reason becomes subject to a condition of development that requires formation of, or annexation into, a CFD.

**“Final Map”** means a final map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 et seq.) that creates lots which do not need to be further subdivided prior to issuance of a building permit for a residential or non-residential structure. The term “Final Map” shall not include any Assessor’s Parcel Map or subdivision map or portion thereof, that does not create lots that are in their final configuration, including Assessor’s Parcels that are designated as remainder parcels.

**“Fiscal Year”** means the period starting July 1 and ending on the following June 30.

**“Improvement Area”** means a geographic area that, upon annexation into CFD No. 2004-1, is identified as an improvement area as defined in the Act instead of a Tax Zone, as defined below. Special Taxes collected within an Improvement Area will be the sole security for Bonds issued for that Improvement Area.

**“Industrial Property”** means all Parcels in CFD No. 2004-1 for which building permits have been or may be issued for construction of an industrial building based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.

**“Land Use Class”** means one of the five mutually-exclusive land use classes identified in Table 1 in Section C below and defined in this Section A. The City shall, in its sole discretion, determine the appropriate Land Use Class for Parcels on which a structure was built prior to CFD Formation.

**“Low Density Residential Property”** means all Parcels in CFD No. 2004-1 for which a building permit has been or may be issued for construction of a residential unit on a Parcel with a maximum density of two or less dwelling units per gross acre based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.

**“Maximum Annual Facilities Special Tax”** means the greatest amount of Annual Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

**“Maximum Annual Maintenance Special Tax”** means the greatest amount of Annual Maintenance Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

**“Maximum One-Time Facilities Special Tax”** means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

**“Maximum Special Taxes”** means, collectively, the Maximum One-Time Facilities Special Tax, Maximum Annual Facilities Special Tax, and Maximum Annual Maintenance Special Tax.

**“Multi-Family Property”** means all Parcels in CFD No. 2004-1 for which building permits have been or may be issued for construction of a residential structure consisting of two or more residential units that share common walls, including but not limited to, townhomes, condominiums, duplexes, triplexes, fourplexes, and apartment units. If a building permit has not yet been issued on the Parcel, the Administrator shall reference the Village One Specific Plan and/or the Parcel’s zoning designation to determine whether the Parcel is Multi-Family Property.

**“Net Taxable Acreage”** or **“Net Taxable Acre”** means the total acreage within a Final Map or Parcel less arterial road right-of-ways and property that is defined in the Final Map for use as a park site, school site, or City-owned or CFD-owned storm drainage basin. If a Subdivision Map is recorded which is not a Final Map for some or all Parcels created by the subdivision, the Administrator shall calculate the Net Taxable Acreage of such unsubdivided Parcels by identifying the Acreage of the Parcel and (i) adding a portion of the acreage of any non-arterial right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way, and (ii) subtracting a portion of the acreage of any arterial right-of-way that fronts the Parcel determined by drawing lines at right angles to the right-of-way. The Net Taxable Acreage of a Parcel or Final Map shall be determined in the sole discretion of the City.

**“One-Time Facilities Special Tax”** means a Special Tax, levied and collected in full by the City prior to a structural building permit being issued for new construction on Taxable Property.

**“Original Parcel”** means an Assessor’s Parcel in CFD No. 2004-1 at the time of CFD Formation or added to the CFD upon annexation, as identified in Attachment 2 (which shall be updated after each annexation). A Successor Parcel that is being further subdivided shall also be considered an Original Parcel for purposes of determining the Maximum Special Taxes pursuant to Section C below.

**“Per-Acre Special Taxes”** means the per-acre Special Taxes identified in Table 1 in Section C below.

**“Proportionately”** means, for Developed Property, that the ratio of the actual Annual Facilities Special Tax and Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax authorized to be

levied in that Fiscal Year is equal for all Assessor's Parcels of Developed Property, respectively. In addition, for Undeveloped Property, "Proportionately" means that the ratio of the actual Annual Facilities Special Tax and actual Annual Maintenance Facilities Special Tax to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax is equal for all Assessor's Parcels of Undeveloped Property, respectively.

**"Public Property"** means any property within the boundaries of CFD No. 2004-1 that is owned by the federal government, State of California, County, City, or other public agency.

**"Single Family Detached Lot"** means an individual numbered lot, which is in its final configuration and for which a building permit may be issued for a single family detached unit.

**"Special Taxes"** means, collectively, the One-Time Facilities Special Tax, the Annual Facilities Special Tax, and the Annual Maintenance Special Tax.

**"Special Tax Category"** means, individually, the One-Time Facilities Special Tax, the Annual Facilities Special Tax, and the Annual Maintenance Special Tax.

**"Subdivision Map"** means a Final Map, large lot subdivision map, or other map recorded with the County that results in the subdivision of an Original Parcel into two or more Successor Parcels.

**"Successor Parcel"** means an Assessor's Parcel of Taxable Property created by the subdivision or reconfiguration of an Original Parcel on which construction of a residential or non-residential structure is permitted.

**"Taxable Property"** means all of the Assessor's Parcels within the boundaries of CFD No. 2004-1 which are not exempt from the Special Tax pursuant to law or Section G below.

**"Taxable Public Property"** means, in any Fiscal Year, all Parcels of Public Property within CFD No. 2004-1 that, (i) based on the Village One Specific Plan, were expected to be Taxable Property and, (ii) based on this expectation, Maximum Special Taxes were assigned to the Parcels in a prior Fiscal Year.

**"Tax Zone"** means a mutually exclusive geographic area within which particular Special Tax rates may be levied pursuant to this Rate and Method of Apportionment of Special Taxes. Attachment 1 identifies the Tax Zone in CFD No. 2004-1 at CFD Formation; additional Tax Zones may be created when property is annexed into the CFD. Alternatively, additional Original Parcels may be added to a Tax Zone with assigned Maximum Special Taxes based on the Expected Land Uses on each Original Parcel.

**"Tax Zone #1"** means the geographic area that is designated in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone #1. Tax Zone #1 may be expanded to include additional Original Parcels that annex to CFD No. 2004-1; Attachments 1 and 2 will be updated each time such an annexation takes place.

**"Undeveloped Property"** means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2004-1 that are not Developed Property.

**“Village One Specific Plan”** means the specific plan for development within the Village One project in the City of Modesto adopted by the City Council on April 1, 2003, as amended from time to time.

**“Village Residential Property”** means, in any Fiscal Year, all Parcels in CFD No. 2004-1 for which a building permit has been or may be issued for construction of a residential unit on a Parcel with a maximum density greater than two dwelling units per gross acre based on reference to the Village One Specific Plan and/or the Parcel’s zoning designation.

**B. DATA FOR ANNUAL ADMINISTRATION**

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property in CFD No. 2004-1. The Administrator shall also determine: (i) the Tax Zone within which each Parcel of Taxable Property is located, (ii) whether each Assessor’s Parcel of Taxable Property is Developed Property or Undeveloped Property, (iii) which Parcels are Commercial Property, Industrial Property, Multi-Family Property, Low Density Residential Property, and Village Residential Property (the City shall, in its sole discretion, determine the appropriate Land Use Class for Parcels on which a structure was built prior to CFD Formation), (iv) the Net Taxable Acreage of each Parcel, and (v) the Annual Facilities Special Tax Requirement and the Annual Maintenance Special Tax Requirement.

In any Fiscal Year, if it is determined that (i) a parcel map for a portion of property in CFD No. 2004-1 was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created Parcels into the then current tax roll), (ii) because of the date the parcel map was recorded, the Assessor does not yet recognize the new Parcels created by the parcel map, and (iii) one or more of the newly-created Parcels meets the definition of Developed Property, the Administrator shall calculate the Special Tax for the property affected by recordation of the parcel map by determining the Special Tax that applies separately to each newly-created Parcel, then applying the sum of the individual Special Taxes to the Original Parcel or Successor Parcel that was subdivided by recordation of the parcel map.

**C. CALCULATING MAXIMUM SPECIAL TAXES**

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in CFD No. 2004-1 in each Fiscal Year, including the Maximum One-Time Facilities Special Tax, Maximum Annual Facilities Special Tax, and Maximum Annual Maintenance Special Tax. A separate method of calculating the Maximum Special Taxes may be identified for Tax Zones or Improvement Areas added to CFD No. 2004-1 as a result of future annexations. The Per-Acre Special Taxes set forth in Table 1 below shall be used for purposes of Sections C.1 and C.2 below:

**Table 1**  
**Per-Acre Special Taxes**  
**Fiscal Year 2004-05 \***

<b>Land Use Class</b>	<b>Per-Acre Special Tax: One-Time Facilities Special Tax</b>	<b>Per-Acre Special Tax: Annual Facilities Special Tax</b>	<b>Per-Acre Special Tax: Annual Maintenance Special Tax</b>
Low Density Residential Property	\$13,342 per Net Taxable Acre	\$3,517 per Net Taxable Acre	\$525 per Net Taxable Acre
Village Residential Property	\$30,281 per Net Taxable Acre	\$6,405 per Net Taxable Acre	\$1,233 per Net Taxable Acre
Multi-Family Property	\$101,437 per Net Taxable Acre	\$7,222 per Net Taxable Acre	\$4,020 per Net Taxable Acre
Commercial Property	\$52,102 per Net Taxable Acre	\$3,570 per Net Taxable Acre	\$920 per Net Taxable Acre
Industrial Property	\$13,103 per Net Taxable Acre	\$2,550 per Net Taxable Acre	\$920 per Net Taxable Acre

*\* All Per-Acre Special Taxes shown in Table 1 are subject to the annual adjustments described in Section D below.*

**1. Original Parcels**

The Maximum Special Taxes for each Land Use Class in the Original Parcel in CFD No. 2004-1 as of CFD Formation is identified in Attachment 2. Attachment 2 will be updated by the Administrator as needed to reflect Original Parcels added to the CFD due to annexations. Until an Original Parcel is subdivided, the Maximum Special Taxes shown in Attachment 2 (escalated as set forth herein) shall be the Maximum Special Taxes for the Parcel unless the zoning on the Original Parcel changes to a Land Use Class that has higher Per-Acre Special Taxes, as shown in Table 1 above. Upon approval of such change in zoning by the City Council, the Administrator shall multiply the applicable Per-Acre Special Taxes by the Net Taxable Acreage of each Land Use Class that is expected on the Parcel based on the rezone. The Administrator shall then update Attachment 2 to reflect the higher Maximum Special Taxes for the Parcel. If a rezone results in a Land Use Class that has a lower Per-Acre Special Tax than the previous Expected Land Uses, there shall be no corresponding reduction in the Maximum Special Taxes for the Parcel. The potential reduction in Maximum Special Tax revenues must be considered separately for each Special Tax Category. If the rezone would cause a reduction in the Maximum Special Tax revenues in any Special Tax Category, the Maximum Special Tax identified for that Special Tax Category shall remain the same as originally assigned to the Original Parcel.

2. **Successor Parcels**

a. ***All Successor Parcels are Single Family Detached Lots***

If the Parcels created by a recorded Subdivision Map are all Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes for the Original Parcel to each of the Successor Parcels created by the subdivision:

**Step 1:** Determine the greater of (i) the Maximum Special Taxes assigned to each Expected Land Use for the Original Parcel, or (ii) the Net Taxable Acreage of Low Density Residential Property and/or Village Residential Property within the Subdivision Map multiplied by the Per-Acre Special Taxes for such Land Use Classes from Table 1 above. If the Subdivision Map includes both Low Density Residential Property and Village Residential Property, separately calculate the amount that applies to each Land Use Class.

**Step 2:** Separately for any Low Density Residential Property and Village Residential Property created by the Subdivision Map, divide the Maximum Special Taxes from Step 1 by the number of Successor Parcels to determine the Maximum Special Taxes for each Single Family Detached Lot.

b. ***No Successor Parcels are Single Family Detached Lots***

If none of the Successor Parcels created by recordation of a Subdivision Map are Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

**Step 1:** Identify the Expected Land Uses for the Original Parcel.

**Step 2:** Determine the Net Taxable Acreage within each Land Use Class created by the Subdivision Map.

**Step 3:** If the Net Taxable Acreage of each Land Use Class from Step 2 is the same as the Expected Land Uses, the Maximum Special Taxes assigned to each of the Expected Land Uses on the Original Parcel shall be allocated to the Successor Parcels based on the Acreage of each Land Use Class that occurs on each Successor Parcel.

**Step 4:** If the Net Taxable Acreage within each Land Use Class from Step 2 is different than the Expected Land Uses for the Original Parcel, the Administrator shall apply the following steps **separately for each Special Tax Category:**

**Step 4a.** Multiply the applicable Per-Acre Special Tax by the Net Taxable Acreage of each Land Use Class created by the Subdivision Map.

**Step 4b.** If the amount calculated in Step 4a is **greater than** the Maximum Special Tax assigned to the Original Parcel, multiply the Net Taxable Acreage of each Land Use Class on each Successor Parcel by the applicable Per-Acre Special Tax from Table 1 above to determine the Maximum Special Tax for each Successor Parcel.

**Step 4c.** If the amount calculated in Step 4a is **less than** the Maximum Special Tax assigned to the Original Parcel: (i) identify the Maximum Special Tax that was assigned to each of the Expected Land Uses on the Parcel, (ii) divide the Maximum Special Tax for each Land Use Class by the Net Taxable Acreage of each Land Use Class actually created by the Subdivision Map, and (iii) multiply the per-acre Maximum Special Tax calculated in (ii) by the Net Taxable Acreage of each Land Use Class on each Successor Parcel to determine the Maximum Special Tax for each Parcel.

If the Land Use Classes on a Successor Parcel or Parcels are different than the Expected Land Uses for that Parcel(s) and such difference would result in a reduction in the Maximum Special Tax assigned to the Original Parcel for any Special Tax Category, the Maximum Special Tax assigned to the Original Parcel shall either be distributed equally on a per-acre basis to the Successor Parcels or, if multiple Land Use Classes are created by the Subdivision Map, the Maximum Special Tax from the Original Parcel shall be distributed to each Land Use Class so that the per-acre tax for each Land Use Class has the same proportional relationship as the Per-Acre Special Taxes in Table 1 above.

*If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2a, C.2b, or C.2c, as appropriate.*

**c. *Some, But Not All, Successor Parcels are Single Family Detached Lots***

If a Subdivision Map divides an Original Parcel into Successor Parcels, of which some are Single Family Detached Lots and some are not, the Administrator shall (i) break out the Net Taxable Acreage of Low Density Residential Property and/or Village Residential Property separately from the Net Taxable Acreage of other Land Use Classes, (ii) for the Low Density Residential Property and/or Village

Residential Property created by the Subdivision Map, apply the steps in Section C.2a to determine the Maximum Special Taxes for each Single Family Detached Lot, and (iii) apply the steps in Section C.2b above to determine the Maximum Special Taxes for Land Use Classes other than Low Density Residential Property and Village Residential Property.

*If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2a, C.2b, or C.2c, as appropriate.*

**After each reallocation of the Maximum Special Taxes upon subdivision or reconfiguration of Original Parcels, the sum of the Maximum Special Taxes assigned to Successor Parcels shall never be less, but may be more, than the Maximum Special Taxes assigned to the Original Parcels prior to such reallocation.**

**D. ESCALATION OF MAXIMUM SPECIAL TAXES**

**1. One-Time Facilities Special Tax**

Beginning in January 2005 and each January thereafter, the Maximum One-Time Facilities Special Tax assigned to each Parcel and the Per-Acre Special Tax shown in Table 1 above shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the One-Time Facilities Special Tax shall become effective on the subsequent July 1.

**2. Annual Facilities Special Tax**

Beginning in Fiscal Year 2005-06, and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax assigned to each Parcel and the Per-Acre Special Tax shown in Table 1 above shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

**3. Annual Maintenance Special Tax**

Beginning in January 2005 and each January thereafter, the Maximum Annual Maintenance Special Tax assigned to each Parcel and the Per-Acre Special Tax shown in Table 1 above shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

**E. METHOD OF LEVY OF THE SPECIAL TAX**

**1. One-Time Facilities Special Tax**

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2004-1 and shall be collected as set forth in Section F below.

**2. Annual Facilities Special Tax**

Commencing with Fiscal Year 2004-05 and for each following Fiscal Year, the Administrator shall determine the Annual Facilities Special Tax Requirement for the Fiscal Year. The Annual Facilities Special Tax shall then be levied on all Parcels of Taxable Property in CFD No. 2004-1 as follows:

*Step 1:* The Annual Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Facilities Special Tax for each Parcel for such Fiscal Year until the amount levied on Developed Property is equal to the Special Tax Requirement prior to applying any Capitalized Interest that is available in the CFD accounts;

*Step 2:* If additional revenue is needed after Step 1, and after applying Capitalized Interest to the Annual Facilities Special Tax Requirement, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Facilities Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

*Step 3:* If additional revenue is needed after applying the first two steps, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Facilities Special Tax assigned to each Parcel of Taxable Public Property.

**3. Annual Maintenance Special Tax**

Commencing with Fiscal Year 2004-05 and for each following Fiscal Year, the Administrator shall determine the Maintenance Special Tax Requirement for the Fiscal Year. The Annual Maintenance Special Tax shall then be levied on all Parcels of Taxable Property as follows:

*Step 1:* The Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year;

*Step 2:* If additional revenue is needed after Step 1, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

**Step 3:** If additional revenue is needed after applying the first two steps, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Maintenance Special Tax assigned to each Parcel of Taxable Public Property.

**F. COLLECTION OF SPECIAL TAX**

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any residential or non-residential structure on Taxable Property within CFD No. 2004-1, and shall be immediately delinquent if not so paid.

The Annual Facilities Special Tax and Annual Maintenance Special Tax for CFD No. 2004-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Facilities Special Taxes and Annual Maintenance Special Taxes through foreclosure or other available methods.

The Annual Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring Authorized Facilities from Annual Facilities Special Tax proceeds have been paid, and all Administrative Expenses have been reimbursed. However, in no event shall an Annual Facilities Special Tax be levied after Fiscal Year 2060-61. The Annual Maintenance Special Tax will continue to be levied and collected unless and until the City determines that the Annual Maintenance Special Tax no longer needs to be levied to pay Authorized Services of the CFD and all Administrative Expenses have been reimbursed. Under no circumstances may the Annual Facilities Special Tax on one Parcel in the CFD be increased by more than ten percent (10%) as a consequence of delinquency or default in payment of the Annual Facilities Special Tax levied on another Parcel or Parcels in the CFD.

**G. EXEMPTIONS**

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Taxes, no Special Taxes shall be levied on Public Property, except Taxable Public Property, as defined herein.

**H. PREPAYMENT OF SPECIAL TAX**

The following definitions apply to this Section H:

**“Outstanding Bonds”** means all Previously Issued Bonds which remain outstanding, with the following exception: if an Annual Facilities Special Tax has been levied against, or already paid by, an Assessor's Parcel making a prepayment, and a portion of the Annual Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

**“Previously Issued Bonds”** means all Bonds that have been issued on behalf of the CFD prior to the date of prepayment.

**“Public Facilities Requirements”** means either \$1,327,000 in 2004 dollars, which shall increase on January 1, 2005, and on each January 1 thereafter by the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or such other number as shall be determined by the City as sufficient to fund Authorized Facilities. The Public Facilities Requirements shown above shall be adjusted or a separate Public Facilities Requirements identified each time property annexes into CFD No. 2004-1; at no time shall the added Public Facilities Requirement for the annexation area exceed the amount of public improvement costs that are expected to be supportable by the Maximum Annual Facilities Special Tax generated within that annexation area.

**“Remaining Facilities Costs”** means the Public Facilities Requirements (as defined above), minus costs of Authorized Facilities funded by Outstanding Bonds (as defined above), developer equity, and/or any other source of funding.

The Annual Facilities Special Tax obligation applicable to an Assessor’s Parcel in the CFD may be prepaid and the obligation of the Assessor’s Parcel to pay the Annual Facilities Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Annual Facilities Special Taxes with respect to such Assessor’s Parcel at the time of prepayment. The Annual Maintenance Special Tax may not be prepaid. An owner of an Assessor’s Parcel intending to prepay the Annual Facilities Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Assessor’s Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Annual Facilities Special Taxes. The Prepayment Amount shall be calculated as follows: (capitalized terms as defined below):

	Bond Redemption Amount
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
<u>less</u>	<u>Reserve Fund Credit</u>
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount shall be determined by application of the following steps:

- Step 1:** Compute the total Maximum Annual Facilities Special Tax that could be collected from the Assessor’s Parcel prepaying the Annual Facilities Special Tax in the Fiscal Year in which prepayment would be received by the City.

- Step 2:** Divide the Maximum Annual Facilities Special Tax from Step 1 by the total amount that could be collected if the Maximum Annual Facilities Special Tax was levied on all Parcels of Taxable Property in the CFD.
- Step 3:** Multiply the quotient computed pursuant to Step 2 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (the **“Bond Redemption Amount”**).
- Step 4:** Compute the current Remaining Facilities Costs (if any).
- Step 5:** Multiply the quotient computed pursuant to Step 2 by the amount determined pursuant to Step 4 to compute the amount of Remaining Facilities Costs to be prepaid (the **“Remaining Facilities Amount”**).
- Step 6:** Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (the **“Redemption Premium”**).
- Step 7:** Compute the amount needed to pay interest on the Bond Redemption Amount starting with the first Bond interest payment date after which the prepayment has been received until the earliest redemption date for the Outstanding Bonds, which, depending on the Bond offering document, may be as early as the next interest payment date.
- Step 8:** Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.
- Step 9:** Take the amount computed pursuant to Step 7 and subtract the amount computed pursuant to Step 8 (the **“Defeasance Requirement”**).
- Step 10:** Determine the costs of computing the prepayment amount, the costs of redeeming Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (the **“Administrative Fees and Expenses”**).
- Step 11:** If and to the extent so provided in the indenture pursuant to which the Outstanding Bonds to be redeemed were issued, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (the **“Reserve Fund Credit”**).
- Step 12:** The Annual Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 3, 5, 6, 9, and 10, less the amount computed pursuant to Step 11 (the **“Prepayment Amount”**).

If an owner that has prepaid the Annual Facilities Special Tax obligation assigned to a Parcel subsequently rezones the Parcel to a Land Use Class that has a higher Per-Acre Annual Facilities Special Tax, the City may in its sole discretion and as a condition of approval of the rezoning,

collect the additional Annual Facilities Special Tax prepayment that would have applied had the Parcel been rezoned at the time of the original prepayment for the Parcel.

**I. INTERPRETATION OF SPECIAL TAX FORMULA**

The City reserves the right to make minor administrative and technical changes to this document that does not materially affect the Rate and Method of Apportionment of Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Taxes.

ORDINANCE NO. 3346-C.S.

AN ORDINANCE AMENDING SECTION 8-4-9 OF THE ZONING MAP OF THE CITY OF MODESTO PREZONING 1.854 ACRES OF PROPERTY LOCATED ON THE NORTH SIDE OF GLENN AVENUE AND WEST OF GUTHERIE STREET TO LOW DENSITY RESIDENTIAL ZONE, R-1. (MODESTO CITY SCHOOLS)

WHEREAS, the City of Modesto is considering annexation of 1.854 acres of property located on the north side of Glenn Avenue and west of Gutherie Street ("Property") to the City of Modesto; and

WHEREAS, pursuant to Modesto Municipal Code Section 10-2.2604, the City of Modesto proposes to prezone the Property to Low Density Residential Zone, R-1, for the purpose of determining the zoning that will apply to the Property upon annexation, and

WHEREAS, Government Code Section 56375 requires that the City prezone any area which it proposes to annex, and

WHEREAS, any prezoning designation shall remain in effect until at least two years after completion of the annexation unless the City Council, after a public hearing, determines that a substantial change in circumstances has occurred that necessitates a departure from the prezoning, and

WHEREAS, after a public hearing held on January 5, 2004, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, it was found and determined by the Planning Commission that prezoning to Low Density Residential Zone, R-1, 1.854 acres of property located on the north side of Glenn Avenue and west of Gutherie Street, for the purpose

of facilitating the Bret Harte Elementary School Expansion in accordance with Government Code Section 65855 for the following reasons:

1. The proposed rezoning is consistent with the Modesto Urban Area General Plan, which identifies the Property as being with an area designated for R-1, Low-Density Residential Zoning, the proposed school use is consistent with the R-1 zoning designation, and the proposed school use is compatible with the adjacent land uses along Glenn Avenue, Frazier and Gutherie Streets.
2. The proposed rezoning is required by public convenience or necessity because the R-1 zoning will facilitate the proposed school expansion project, which will provide needed services and facilities for that area. Bret Harte School is designated as a "Critically Overcrowded School."
3. The proposed rezoning will result in orderly planning and use of land resources because the proposed school project would implement the Community Growth policies of the Modesto Urban Area General Plan as they relate to the provision of adequate school facilities. The subject site and surrounding neighborhood has already been developed with a school and single-family homes. This renovation and expansion project will continue the development character of the area.
4. The proposed rezoning will further the City's economic development goals because the project will serve to better educate our community's children with improved facilities and capacity.

WHEREAS, by Resolution No. 2004-02, adopted on January 5, 2004, the Planning Commission recommended to the City Council an amendment to Section 8-4-9 of the Zoning Map to prezone the hereafter described property to Low Density Residential, R-1, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on February 24, 2004, at 5:30 p.m., and continued to April 6, 2004, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

NOW, THEREFORE, the Council of the City of Modesto does ordain as follows:

SECTION 1. COUNCIL FINDINGS. After a public hearing held on February 24, 2004 and continued to April 6, 2004, this Council finds and determines that the requested rezoning is in accordance with the General Plan, and will serve the public health, safety and general welfare and provide economic and social advantages resulting from the orderly, planned use of land resources for the reasons set forth above.

SECTION 2. ZONING CHANGE. Section 8-4-9 of the Zoning Map is hereby amended to prezone the following described property to Low Density Residential Zone, R-1:

All that certain real property situate in portion of the southwest quarter of Section 8, Township 4 South, Range 9 East, Mount Diablo Base and Meridian, in the County of Stanislaus, State of California described as follows:

Beginning at the intersection of the east-west quarter section line of said Section 8 with the centerline of 60 foot wide Glenn Avenue which is on the south line of Hatch Road No. 1 Government Reorganization; thence along said east-west quarter section line, being also said south line of Hatch Road No. 1 Government Reorganization, North 89°10'00" West 612.56 feet to the southeastern right-of-way of the Turlock Irrigation District Lateral No. 1; thence along said right-of-way of Lateral No. 1, South 0°26'00" West 50.00 feet to the north line of the alley in Block 9812 of the Rutherford Tract according to the official map thereof recorded in Volume 16 of Maps, Page 37 Stanislaus County Records; thence along said north line of alley South 89°10'00" East 96.62 feet to the northerly extension of the east line of Lot 10 of said Block 9812; thence along said northerly extension of the east line of Lot 10 and the southerly extension thereof, South 0°13'00" West 165.51 feet to the centerline of said 60 foot wide Glenn Avenue (formerly 5<sup>th</sup> Avenue on said Rutherford Tract); thence along said center line South 89°20'00" East 190.77 feet to an angle point; thence along said center line North 57°12'00" East 388.08 feet to the beginning.

Containing: 80,781 SF (1.854 AC)

SECTION 3. ZONING MAP. Section 8-4-9 of the Zoning Map of the City of Modesto is hereby amended to appear as set forth on the map attached hereto and which is hereby made a

part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Dunbar, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By 

JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By 

Community Development Department  
Planning Division

Ord. No. 3346-C.S.

FINAL ADOPTION CLAUSE


The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27<sup>th</sup> day of April, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED: \_\_\_\_\_

  
MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR, City Clerk

Effective Date: May 27, 2004

ORDINANCE NO. 3347-C.S.

AN ORDINANCE AMENDING SECTION 3-3-9 OF THE ZONING MAP TO REZONE FROM SPECIFIC PLAN OVERLAY ZONE, SP-O, TO PLANNED DEVELOPMENT ZONE, P-D(565), PROPERTY LOCATED AT THE NORTHEAST CORNER OF COFFEE ROAD AND MABLE AVENUE. (VALLEY ASSOCIATED UROLOGY MEDICAL GROUP)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 3-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Specific Plan Overlay Zone, SP-O, to Planned Development Zone, P-D(565):

SP-O to P-D(565)

All that portion of the south ½ of the southwest ¼ of section 3, Township 3 South, Range 9 East, M.D.B.&M., City of Modesto, County of Stanislaus, State of California.

Parcel 1 of that certain Map filed in Vol. 22 of Parcel Maps at Page 21, Stanislaus County Records;

also including the Easterly ½ of the original 40-foot Coffee Road, and the Northerly ½ of the original 40-foot of Mable Avenue.

SECTION 2. USES. The following uses shall be permitted in said P-D(565) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Professional Office (P-O) Zone;
2. Associated Off-Street Parking.

SECTION 3. ZONING MAP. Section Map 3-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 6th day of April, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By 

JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By 

MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By 

Community Development Department  
Planning Division

Ord. No. 3347-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 27<sup>th</sup> day of April, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Hawn

APPROVED:  \_\_\_\_\_

MAYOR JIM RIDENOUR

ATTEST:  \_\_\_\_\_

JEAN ZAHR, City Clerk

Effective Date: May 27, 2004

**CITY OF MODESTO  
ORDINANCE NO. 2004-3348**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
MODESTO ACTING IN ITS CAPACITY AS THE LEGISLATIVE  
BODY OF THE CITY OF MODESTO COMMUNITY FACILITIES  
DISTRICT NO. 2003-1 (FAIRVIEW VILLAGE) REPEALING  
ORDINANCE 3339-C.S. AND AUTHORIZING THE LEVY OF A  
SPECIAL TAX OF THE DISTRICT

The City Council of the City of Modesto (the "City Council") does ordain as follows:

WHEREAS, on October 28, 2003, the City Council adopted Resolution No. 2003-558 entitled "A Resolution Declaring the City Council's Intention to Establish City of Modesto Community Facilities District No. 2003-1 (Fairview Village) and to Authorize the Levy of a Special Tax Within Said Community Facilities District" stating its intention to form City of Modesto Community Facilities District No. 2003-1 (Fairview Village) (the "Community Facilities District") pursuant to the Mello-Roos Community Facilities Act of 1982, as amended (the "Act") in order to finance certain services and facilities and incidental expenses to be incurred in connection with financing the foregoing; and

WHEREAS, the City Council has held a noticed public hearing concerning the establishment of the Community Facilities District, as required by the Act; and

WHEREAS, subsequent to said hearing, the City Council adopted Resolution No. 2003-660 entitled "A Resolution Establishing City of Modesto Community Facilities District No. 2003-1 (Fairview Village), Authorizing the Levy of Special Taxes Therein and Establishing an Annual Appropriations Limit" (the "Resolution of Formation"), Resolution No. 2003-661 entitled "A Resolution Determining it Necessary to Incur Bonded Indebtedness Within the City of Modesto Community Facilities District No. 2003-1 (Fairview Village)," and Resolution No. 2003-662 entitled "A Resolution Calling a Special Election for the City of Modesto Community Facilities District No. 2003-1 (Fairview Village)," which resolutions established the Community Facilities District, authorized the levy of special taxes therein and called an election within the Community Facilities District on the propositions of levying special taxes, authorizing the issuance of bonds and establishing an appropriations limit; and

WHEREAS, an election was held within the Community Facilities District at which the qualified electors approved by more than a two-thirds vote the proposition of levying special taxes, issuing bonds and establishing an appropriations limit; and

WHEREAS, on December 11, 2003, the City Council adopted Ordinance 3339-C.S. authorizing the levy of the special taxes approved at the December 11, 2003 election; and

WHEREAS, subsequent to the adoption of Ordinance 3339-C.S., the City Council acting as the legislative body of the Community Facilities District has determined that the rate and method of apportionment of the special tax (the "Rate and Method"), described in Ordinance 3339-C.S. and approved by the qualified electors within the Community Facilities District at the special election held on December 11, 2003 pursuant to the Mello-Roos Community Facilities Act of 1982, as

amended, commencing with Section 53311 of the Government Code (the "Act"), should be changed as set forth in Exhibit A to Resolution No. 2004-173 (the "Rate and Method Amendment"); and

WHEREAS, the City Council adopted a resolution expressing its intention to consider the proposed Rate and Method Amendment and calling a public hearing on May 11, 2004 as required by Section 53338 of the Act; and

WHEREAS, on May 11, 2004, the City Council held a public hearing regarding the Rate and Method Amendment in accordance with the requirements of Section 53338 of the Act at the conclusion of which the City Council determined to submit the Rate and Method Amendment to a vote of the qualified electors of the Community Facilities District and adopted a resolution calling an election to approve the Rate and Method Amendment; and

WHEREAS, the election on the Rate and Method Amendment was held on May 11, 2004, following which the City Clerk canvassed the election results and certified that more than two-thirds of the votes cast were in favor of the Rate and Method Amendment; and

WHEREAS, on May 11, 2004, the City Council adopted a resolution of change in accordance with Section 53338(b) of the Act, which declared the Rate and Method Amendment to be effective; and

WHEREAS, the City Council desires to repeal Ordinance No. 3339-CS. and adopt this ordinance to authorize the levy of a special tax within the District in accordance with the Rate and Method Amendment for the purposes set forth in the Resolution of Formation;

NOW, THEREFORE, the Council of the City of Modesto, acting as the legislative body of City of Modesto Community Facilities District No. 2003-1 (Fairview Village), DOES ORDAIN as follows:

Section 1. The above recitals are all true and correct.

Section 2. By the passage of this Ordinance, the City Council repeals Ordinance 3339-C.S. and authorizes and levies special taxes within the Community Facilities District at the rates and in accordance with the methods of apportionment set forth in the Rate and Method Amendment and which is attached hereto as Attachment A and incorporated by this reference.

Section 3. The District Administrator shall be responsible for annually preparing, or causing the preparation of, the current roll of special tax levy obligations by assessor's parcel number on non-exempt property within the Community Facilities District. The City Council or, to the maximum extent permitted by law, the District Administrator is authorized to determine the specific special taxes to be levied on each parcel of land in the Community Facilities District, in the manner and as provided in the Rate and Method Amendment. In connection with the foregoing, the District Administrator of the City shall take any and all steps necessary in order to deliver to the Stanislaus County Tax Collector, on or before the date specified in Section 53340, a certified list of all parcels subject to the Annual Maintenance Special Tax and/or the Annual Facilities Special Tax (each as defined in the Rate and Method Amendment) levies, including the amount of each such tax to be levied on each parcel for the applicable tax year. The special taxes to be levied shall not exceed the maximum rates set forth in the Rate and Method Amendment, but the special taxes may be levied at lower rates. The levy and collection of the special taxes within the Community Facilities District is

herewith ordered for the 2004/2005 fiscal year and in each subsequent fiscal year in which the special taxes may validly be levied. A certified copy of this ordinance and any attached documentation shall be delivered to the Auditor-Controller of the County of Stanislaus for placement of such taxes on the 2004/2005 Stanislaus County tax roll and in each subsequent fiscal year in which the special taxes may validly be levied.

Section 4. Properties of entities of the state, federal or other local governments shall be exempt from the above-referenced special taxes only to the extent set forth in the Rate and Method Amendment, and except as otherwise provided in Sections 53317.3 and 53317.5 of the Act.

Section 5. All of the collections of the special taxes shall be used only as provided for in the Act and the Resolution of Formation. The special taxes shall be levied only so long as needed to accomplish the purposes described in the Resolution of Formation and the Rate and Method Amendment.

Section 6. The One-Time Special Facilities Tax (as defined in the Rate and Method Amendment) shall be collected prior to the issuance of a building permit for new construction of any structure on Taxable Property within the Community Facilities District. The Annual Maintenance Special Tax and the Annual Facilities Special Tax shall be collected in the same manner as ordinary *ad valorem* taxes are collected and shall be subject to the same penalties and the same procedure and sale in cases of delinquency as provided for *ad valorem* taxes as such collection procedure may be modified by law or this City Council from time to time. Notwithstanding the foregoing, the District Administrator may collect, or cause to be collected, one or more installments of such special taxes by means of direct billing of the property owners within the Community Facilities District if, in the judgment of the District Administrator, such means of collection will reduce the burden of administering the Community Facilities District or is otherwise appropriate in the circumstances. In such event, such special taxes shall become delinquent if not paid when due as set forth in any such respective billing to the property owners.

Section 7. This Ordinance shall be effective after thirty (30) days from its final passage and adoption.

Section 8. At least two (2) days prior to its final adoption, copies of this Ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this Ordinance, the date of its introduction and the places where this Ordinance is posted.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Modesto, California, held on May 11, 2004, by Councilmember Keating, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour


NOES: None

ABSENT: None



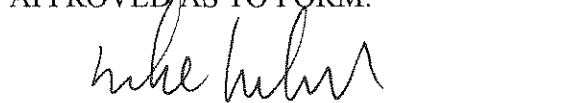
Jim Ridenour,  
Mayor of the City of Modesto

ATTEST:

  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

  
MICHAEL D. MILICH, City Attorney

**ATTACHMENT A**

**CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT NO. 2003-1  
(FAIRVIEW VILLAGE)**

**AMENDED RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

**CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT No. 2003-1  
(FAIRVIEW VILLAGE)**

**RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX**

Special Taxes applicable to each Assessor's Parcel in Community Facilities District No. 2003-1 (Fairview Village) [herein "CFD No. 2003-1" or "the CFD"] shall be levied and collected according to the tax liability determined by the City Council of the City of Modesto, through the application of the appropriate amount or rate for Taxable Property, as described below. All of the property in CFD No. 2003-1, unless exempted by law or by the provisions of Section G below, shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to CFD No. 2003-1 unless a separate Rate and Method of Apportionment is adopted for the annexation area.

**A. DEFINITIONS**

The terms hereinafter set forth have the following meanings:

**"Acre" or "Acreage"** means the land area of an Assessor's Parcel as shown on an Assessor's Parcel Map, or if the land area is not shown on an Assessor's Parcel Map, the land area shown on the applicable Final Map or other Development Plan.

**"Act"** means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

**"Administrative Expenses"** means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City carrying out its duties with respect to CFD No. 2003-1 and the Bonds, including, but not limited to, levying and collecting the Special Taxes, the fees and expenses of legal counsel, charges levied by the County Auditor's Office, Tax Collector's Office, and/or Treasurer's Office, costs related to annexing property into the CFD, costs related to property owner inquiries regarding the Special Taxes, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Taxes, and all other costs and expenses of the City in any way related to the establishment or administration of the CFD.

**“Administrator”** means the person or firm designated by the City to administer the Special Taxes according to this Rate and Method of Apportionment of Special Tax.

**“Annual Maintenance Special Tax”** means a special tax levied in any Fiscal Year to pay the Maintenance Special Tax Requirement, as defined below.

**“Annual Facilities Special Tax”** means a special tax levied in any Fiscal Year to pay the Annual Facilities Special Tax Requirement, as defined below.

**“Annual Facilities Special Tax Requirement”** means the amount necessary in any Fiscal Year (i) to pay principal and interest on Bonds, (ii) to create or replenish reserve funds, (iii) to cure any delinquencies in the payment of principal or interest on indebtedness of CFD No. 2003-1 which have occurred in the prior Fiscal Year or (based on delinquencies in the payment of the Annual Facilities Special Taxes which have already taken place) are expected to occur in the Fiscal Year in which the tax will be collected, and (iv) to pay construction expenses to be funded directly from Annual Facility Special Tax proceeds. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against debt service pursuant to a Bond indenture, Bond resolution, or other legal document that sets forth these terms; (ii) proceeds received by CFD No. 2003-1 from the collection of penalties associated with delinquent Annual Facilities Special Taxes; and (iii) any other revenues available to pay debt service on the Bonds as determined by the Administrator.

**“Assessor’s Parcel”** or **“Parcel”** means a lot or parcel shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

**“Assessor’s Parcel Map”** means an official map of the County Assessor designating parcels by Assessor’s Parcel number.

**“Bonds”** means bonds or other debt (as defined in the Act), whether in one or more series, issued, insured or assumed by CFD No. 2003-1 related to public infrastructure and/or improvements that are authorized to be funded by CFD No. 2003-1.

**“Capitalized Interest”** means funds in any capitalized interest account available to pay debt service on Bonds.

**“CFD Formation”** means the date on which the Resolution of Formation to form CFD No. 2003-1 was adopted by the City Council.

**“City”** means the City of Modesto.

**“City Council”** means the City Council of the City of Modesto, acting as the legislative body of CFD No. 2003-1.

**“County”** means the County of Stanislaus.

**“Developed Property”** means, in any Fiscal Year, the following:

***For purposes of levying the Annual Maintenance Special Tax, “Developed Property” means:***

- *for Single Family Detached Property, all Parcels for which a Final Map was recorded prior to June 30 of the preceding Fiscal Year*
- for Single Family Attached Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year.
- for Other Property, all parcels for which a building permit for new construction of a building structure was issued prior to June 30 of the preceding Fiscal Year.

***For purposes of levying the Annual Facilities Special Tax, “Developed Property” means:***

- *for Single Family Detached Property, all Parcels for which a building permit for new construction of a Unit was issued prior to June 30 of the preceding Fiscal Year*
- for Single Family Attached Property, all Parcels for which a building permit for new construction of a residential structure was issued prior to June 30 of the preceding Fiscal Year.
- for Other Property, all parcels for which a building permit for new construction of a building structure was issued prior to June 30 of the preceding Fiscal Year.

**“Development Plan”** means a condominium plan, apartment plan, site plan or other development plan that identifies such information as the type of structure, the acreage, the square footage, and/or the number of Units that will be developed on Single Family Attached Property or Other Property.

**“Final Map”** means a final map, or portion thereof, approved by the City pursuant to the Subdivision Map Act (California Government Code Section 66410 *et seq.*) that creates lots which do not need to be further subdivided prior to issuance of a building permit for a residential or non-residential structure. The term “Final Map” shall not include any Assessor’s Parcel Map or subdivision map or portion thereof, that does not create lots in that are in their final configuration, including Assessor’s Parcels that are designated as remainder parcels.

**“Fiscal Year”** means the period starting July 1 and ending on the following June 30.

**“Maintenance Special Tax Requirement”** means that amount necessary in any Fiscal Year to (i) pay for authorized maintenance expenses, (ii) pay administrative expenses of CFD No. 2003-1, and (iii) cure any delinquencies in the payment of Annual Maintenance Special Taxes levied in prior Fiscal Years or (based on delinquencies in the payment of Annual Maintenance Special Taxes which have already taken place) are expected to occur in the current Fiscal Year.

**“Maximum One-Time Facilities Special Tax”** means the greatest amount of One-Time Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

**“Maximum Annual Facilities Special Tax”** means the greatest amount of Annual Facilities Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

**“Maximum Annual Maintenance Special Tax”** means the greatest amount of Annual Maintenance Special Tax that can be levied on an Assessor’s Parcel in any Fiscal Year determined in accordance with Sections C and D below.

**“Maximum Special Taxes”** means, collectively, the Maximum One-Time Facilities Special Tax, Maximum Annual Facilities Special Tax, and Maximum Annual Maintenance Special Tax.

**“One-Time Facilities Special Tax”** means a special tax, levied on Taxable Property to pay the One-Time Facilities Special Tax Requirement and collected by the City prior to a structural building permit being issued for new construction on Taxable Property.

**“One-Time Facilities Special Tax Requirement”** means the amount determined by the City and identified in Attachment 2 of this Rate and Method of Apportionment that is needed to pay facility costs authorized to be funded by CFD No. 2003-1, which will not be paid by the Bonds or Annual Facilities Special Tax.

**“Original Parcel”** means an Assessor’s Parcel in CFD No. 2003-1 at the time of CFD Formation, as identified in Attachment 2. A Successor Parcel that is being further subdivided shall also be considered an Original Parcel for purposes of determining the Maximum Special Taxes pursuant to Section C.

**“Other Property”** means all Taxable Property that is Developed Property but is not Single Family Attached Property or Single Family Detached Property.

**“Proportionately”** means, for Developed Property, that the ratio of the actual Annual Facilities Special Tax and Annual Maintenance Special Tax levied in any Fiscal Year to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax authorized to be levied in that Fiscal Year is equal for all Assessor’s Parcels of Developed Property, respectively. In addition, for Undeveloped Property, “Proportionately” means that the ratio of the actual Annual Facilities Special Tax and actual Annual Maintenance Facilities Special Tax to the Maximum Annual Facilities Special Tax and Maximum Annual Maintenance Special Tax is equal for all Assessor’s Parcels of Undeveloped Property, respectively.

**“Public Property”** means any property within the boundaries of CFD No. 2003-1 that is owned by the federal government, State of California, County, City, or other public agency.

**“Single Family Attached Property”** means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued for construction of a residential structure consisting of two or more Units that share common walls and are offered as for-sale Units, including such residential structures that meet the statutory definition of a condominium contained in Civil Code Section 1351.

**“Single Family Detached Lot”** means an individual numbered lot, which is in its final configuration and for which a building permit may be issued for a single family detached Unit.

**“Single Family Detached Property”** means, in any Fiscal Year, all Parcels of Developed Property for which a building permit was issued or will be issued for construction of a Unit that does not share a common wall with another Unit.

**“Special Taxes”** means, collectively, the One-Time Facilities Special Tax, the Annual Facilities Special Tax, and the Annual Maintenance Special Tax.

**“Subdivision Map”** means a Final Map, large lot subdivision map, or other map recorded with the County that results in the subdivision of an Original Parcel into two or more Successor Parcels.

**“Successor Parcel”** means an Assessor’s Parcel of Taxable Property created by the subdivision or reconfiguration of an Original Parcel on which construction of a residential or non-residential structure is permitted.

**“Taxable Property”** means all of the Assessor’s Parcels within the boundaries of CFD No. 2003-1 which are not exempt from the Special Tax pursuant to law or Section G below.

**“Taxable Public Property”** means, in any Fiscal Year, all Parcels of Public Property within CFD No. 2003-1 that, (i) based on a tentative map or other Development Plan, were expected to be Taxable Property and, (ii) based on this expectation, Maximum Special Taxes were assigned to the Parcels in prior Fiscal Years.

**“Tax Zone”** means a mutually exclusive geographic area, within which particular Special Tax rates may be levied pursuant to this Rate and Method of Apportionment of Special Tax. Attachment 1 identifies the Tax Zone in CFD No. 2003-1 at CFD Formation; additional Tax Zones may be created when property is annexed into the CFD.

**“Tax Zone #1”** means the geographic area that was identified in Fiscal Year 2003-04 by Assessor’s Parcel number 56-27-02 and is designated in Attachment 1 of this Rate and Method of Apportionment of Special Tax as Tax Zone #1.

**“Undeveloped Property”** means, in any Fiscal Year, all Parcels of Taxable Property within CFD No. 2003-1 that are not Developed Property.

**“Unit”** means (i) for Single Family Detached Property, an individual single-family detached unit, and (ii) for Single Family Attached Property, an individual residential unit within a duplex, triplex, fourplex, townhome, or condominium structure.

## **B. DATA FOR ANNUAL ADMINISTRATION**

On or about July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Parcels of Taxable Property. The Administrator shall also determine: (i) the Tax Zone within which each Parcel of Taxable Property is located, (ii) whether each Assessor’s Parcel of Taxable Property is Developed Property or Undeveloped Property, (iii) for Developed Property, which Parcels are Single Family Detached Property, Single Family Attached Property, and Other Property, (iv) for Parcels of Single Family Attached Property, the number of Units on each Parcel, (v) for Other Property, the Acreage of each Parcel, and (vi) the One-Time Facilities Special Tax

Requirement, the Annual Facilities Special Tax Requirement, and the Maintenance Special Tax Requirement.

For Single Family Attached Property, the number of Units shall be determined by referencing the relevant Development Plan. If, in any Fiscal Year, an Assessor's Parcel includes both Developed Property and Undeveloped Property, the Administrator shall determine the acreage associated with the Developed Property, subtract this acreage from the total Acreage of the Assessor's Parcel, and use the remaining acreage to calculate the Special Tax that will apply to Undeveloped Property within the Assessor's Parcel. The Special Tax shall then be calculated for the Developed Property on the Parcel, and the total Special Tax levied on the Assessor's Parcel shall be the sum of the Special Taxes determined separately for the Undeveloped Property and Developed Property on the Parcel.

### **C. CALCULATING THE MAXIMUM SPECIAL TAXES**

The Administrator shall use the procedures set forth below to calculate the Maximum Special Taxes for each Parcel in CFD No. 2003-1 in each Fiscal Year, including the Maximum One-Time Facilities Special Tax, Annual Facilities Special Tax, and Annual Maintenance Special Tax.

#### **1. Original Parcels**

The Maximum Special Taxes for each Original Parcel in CFD No. 2003-1 as of CFD Formation are identified in Attachment 2. Attachment 2 will be updated by the Administrator as needed to reflect Original Parcels added to the CFD due to annexations.

#### **2. Successor Parcels**

##### **a. *All Successor Parcels are Single Family Detached Lots***

If the Parcels created by a recorded Subdivision Map are all Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels created by the subdivision:

**Step 1:** Identify the Maximum Special Taxes assigned to the Original Parcel;

**Step 2:** Divide the Maximum Special Taxes from Step 1 by the number of Single Family Detached Lots created by the Subdivision Map to determine the Maximum Special Taxes for each Single Family Detached Lot.

##### **b. *No Successor Parcels are Single Family Detached Lots***

If none of the Successor Parcels created by recordation of a Subdivision Map are Single Family Detached Lots, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

- Step 1:** Identify the Maximum Special Taxes assigned to the Original Parcel;
- Step 2:** Determine the total Acreage of Taxable Property created by subdivision of the Original Parcel;
- Step 3:** Divide the Maximum Special Taxes from Step 1 by the Acreage from Step 2 to calculate Maximum Special Taxes per acre;
- Step 4:** Multiply the per-acre Maximum Special Taxes from Step 3 by the Acreage in each Successor Parcel to calculate the Maximum Special Taxes for each Successor Parcel.

*If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2a, C.2b, or C.2c, as appropriate.*

**c. *Some, But Not All, Successor Parcels are Single Family Detached Lots***

If a Subdivision Map divides an Original Parcel into Successor Parcels, of which some are Single Family Detached Lots and some are not, the Administrator shall apply the following steps to allocate the Maximum Special Taxes assigned to the Original Parcel to each of the Successor Parcels:

- Step 1:** Identify the Maximum Special Taxes assigned to the Original Parcel;
- Step 2:** Determine the total Acreage of Taxable Property created by subdivision of the Original Parcel;
- Step 3:** Determine the total Acreage of Single Family Detached Property created by the subdivision by taking the sum of the Acreage in the individual Single Family Detached Lots;
- Step 4:** Divide the Maximum Special Taxes from Step 1 by the Acreage calculated in Step 2 to calculate Maximum Special Taxes per acre;
- Step 5:** Multiply the per-acre Maximum Special Taxes calculated in Step 4 by the Acreage of Single Family Detached Property calculated in Step 3 to determine the total Maximum Special Taxes to be assigned to the Single Family Detached Property created by the subdivision;
- Step 6:** Divide the amount calculated in Step 5 by the number of Single Family Detached Lots created by the subdivision to determine the Maximum Special Taxes for each Single Family Detached Lot;
- Step 7:** Multiply the per-acre Maximum Special Taxes calculated in Step 4 by the Acreage of each Successor Parcel that is not Single Family Detached Property to calculate the Maximum Special Taxes for such Parcels.

*If, after subdivision of an Original Parcel, a Successor Parcel is further subdivided, the Successor Parcel shall be treated as an Original Parcel for purposes of allocating Maximum Special Taxes pursuant to Section C.2a, C.2b, or C.2c, as appropriate.*

After each reallocation of the Maximum Special Taxes upon subdivision or reconfiguration of Original Parcels, the sum of the Maximum Special Taxes assigned to Successor Parcels shall never be less than the Maximum Special Taxes assigned to the Original Parcels prior to such reallocation.

**D. ESCALATION OF MAXIMUM SPECIAL TAXES**

**1. One-Time Facilities Special Tax**

Beginning in January 2005 and each January thereafter, the Maximum One-Time Facilities Special Tax assigned to each Parcel shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.

**2. Annual Facilities Special Tax**

Beginning with Fiscal Year 2005-06, and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax assigned to each Parcel shall be increased by two percent (2%) of the amount in effect in the prior Fiscal Year.

**3. Annual Maintenance Special Tax**

Beginning in January 2005 and each January thereafter, the Maximum Annual Maintenance Special Tax shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

**E. METHOD OF LEVY OF THE SPECIAL TAX**

**1. One-Time Facilities Special Tax**

The Maximum One-Time Facilities Special Tax determined pursuant to Sections C and D above shall be levied on all Taxable Property in CFD No. 2003-1 and shall be collected as set forth in Section F below.

## 2. Annual Facilities Special Tax

Commencing with Fiscal Year 2004-05 and for each following Fiscal Year, the Administrator shall determine the Annual Facilities Special Tax Requirement for that Fiscal Year. The Annual Facilities Special Tax shall then be levied on all Parcels of Taxable Property as follows:

*Step 1:* The Annual Facilities Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Facilities Special Tax for each Parcel for such Fiscal Year;

*Step 2:* If additional revenue is needed after Step 1, and after applying Capitalized Interest to the Annual Facilities Special Tax Requirement, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Facilities Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

*Step 3:* If additional revenue is needed after applying the first two steps, the Annual Facilities Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Facilities Special Tax assigned to each Parcel of Taxable Public Property.

## 3. Annual Maintenance Special Tax

Commencing with Fiscal Year 2004-05 and for each following Fiscal Year, the Administrator shall determine the Maintenance Special Tax Requirement for that Fiscal Year. The Annual Maintenance Special Tax shall then be levied on all Parcels of Taxable Property as follows:

*Step 1:* The Annual Maintenance Special Tax shall be levied Proportionately on each Parcel of Developed Property within the CFD up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel for such Fiscal Year;

*Step 2:* If additional revenue is needed after Step 1, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Undeveloped Property within the CFD, up to 100% of the Maximum Annual Maintenance Special Tax for each Parcel of Undeveloped Property for such Fiscal Year;

*Step 3:* If additional revenue is needed after applying the first two steps, the Annual Maintenance Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Annual Maintenance Special Tax assigned to each Parcel of Taxable Public Property.

## F. COLLECTION OF SPECIAL TAX

The Maximum One-Time Facilities Special Tax shall be collected prior to a building permit being issued for new construction of any residential or non-residential structure on Taxable Property within CFD No. 2003-1, and shall be immediately delinquent if not so paid.

The Annual Facilities Special Tax and Annual Maintenance Special Tax for CFD No. 2003-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City may directly bill, collect at a different time or in a different manner, and/or collect delinquent Annual Facilities Special Taxes and Annual Maintenance Special Taxes through foreclosure or other available methods.

The Annual Facilities Special Tax shall be levied and collected until principal and interest on Bonds have been repaid, costs of constructing or acquiring authorized facilities from Annual Facilities Special Tax proceeds have been paid, and all administrative expenses have been reimbursed. However, in no event shall an Annual Facilities Special Tax be levied after Fiscal Year 2050-2051. The Annual Maintenance Special Tax will continue to be levied and collected unless and until the City determines that Annual Maintenance Special Tax revenues are no longer needed to pay authorized services of the CFD.

#### **G. EXEMPTIONS**

Notwithstanding any other provision of this Rate and Method of Apportionment of Special Tax, no Special Taxes shall be levied on Public Property, except Taxable Public Property, as defined herein.

#### **H. PREPAYMENT OF SPECIAL TAX**

The following definitions apply to this Section H:

**“Outstanding Bonds”** means all Previously Issued Bonds which remain outstanding, with the following exception: if an Annual Facilities Special Tax has been levied against, or already paid by, an Assessor’s Parcel making a prepayment, and a portion of the Annual Facilities Special Tax will be used to pay a portion of the next principal payment on the Bonds that remain outstanding (as determined by the Administrator), that next principal payment shall be subtracted from the total Bond principal that remains outstanding, and the difference shall be used as the amount of Outstanding Bonds for purposes of this prepayment formula.

**“Previously Issued Bonds”** means all Bonds that have been issued on behalf of the CFD prior to the date of prepayment.

**“Public Facilities Requirements”** means either \$3,800,000 in 2004 dollars, which shall increase on January 1, 2005, and on each January 1 thereafter by the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or such lower number as shall be determined by the City as sufficient to fund improvements that are authorized to be funded by the CFD. The Public Facilities Requirements shown above may be adjusted or

a separate Public Facilities Requirements identified each time property annexes into CFD No. 2003-1; at no time shall the added Public Facilities Requirement for that annexation area exceed the amount of public improvement costs that are expected to be supportable by the Maximum Annual Facilities Special Tax revenues generated within that annexation area.

**“Remaining Facilities Costs”** means the Public Facilities Requirements (as defined above), minus public facility costs funded by Outstanding Bonds (as defined above), developer equity, and/or any other source of funding.

The Annual Facilities Special Tax obligation applicable to an Assessor’s Parcel in the CFD may be prepaid and the obligation of the Assessor’s Parcel to pay the Annual Facilities Special Tax permanently satisfied as described herein, provided that a prepayment may be made only if there are no delinquent Annual Facilities Special Taxes with respect to such Assessor’s Parcel at the time of prepayment. The Annual Maintenance Special Tax may not be prepaid. An owner of an Assessor’s Parcel intending to prepay the Annual Facilities Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for such Assessor’s Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Annual Facilities Special Taxes. The Prepayment Amount shall be calculated as follows: (capitalized terms as defined below):

	Bond Redemption Amount
plus	Remaining Facilities Amount
plus	Redemption Premium
plus	Defeasance Requirement
plus	Administrative Fees and Expenses
less	<u>Reserve Fund Credit</u>
equals	Prepayment Amount

As of the proposed date of prepayment, the Prepayment Amount shall be determined by application of the following steps:

- Step 1.** Compute the total Maximum Annual Facilities Special Tax that could be collected from the Assessor’s Parcel prepaying the Annual Facilities Special Tax in the Fiscal Year in which prepayment would be received by the City.
- Step 2.** Divide the Maximum Annual Facilities Special Tax from Step 1 by the total amount that could be collected if the Maximum Annual Facilities Special Tax was levied on all Parcels of Taxable Property in the CFD.
- Step 3.** Multiply the quotient computed pursuant to Step 2 by the Outstanding Bonds to compute the amount of Outstanding Bonds to be retired and prepaid (*the “Bond Redemption Amount”*).
- Step 4.** Compute the current Remaining Facilities Costs (if any).
- Step 5.** Multiply the quotient computed pursuant to Step 2 by the amount determined pursuant to Step 4 to compute the amount of Remaining Facilities Costs to be prepaid (*the “Remaining Facilities Amount”*).

- Step 6.** Multiply the Bond Redemption Amount computed pursuant to Step 3 by the applicable redemption premium, if any, on the Outstanding Bonds to be redeemed (*the "Redemption Premium"*).
- Step 7.** Compute the amount needed to pay interest on the Bond Redemption Amount starting with the first Bond interest payment date after which the prepayment has been received until the earliest redemption date for the Outstanding Bonds, which, depending on the Bond offering document, may be as early as the next interest payment date.
- Step 8:** Compute the amount of interest the City reasonably expects to derive from reinvestment of the Bond Redemption Amount plus the Redemption Premium from the first Bond interest payment date after which the prepayment has been received until the redemption date for the Outstanding Bonds.
- Step 9:** Take the amount computed pursuant to Step 7 and subtract the amount computed pursuant to Step 8 (*"Defeasance Requirement"*).
- Step 10.** Determine the costs of computing the prepayment amount, the costs of redeeming Bonds, and the costs of recording any notices to evidence the prepayment and the redemption (*"Administrative Fees and Expenses"*).
- Step 11.** If and to the extent so provided in the indenture pursuant to which the Outstanding Bonds to be redeemed were issued, a reserve fund credit shall be calculated as a reduction in the applicable reserve fund for the Outstanding Bonds to be redeemed pursuant to the prepayment (*"Reserve Fund Credit"*).
- Step 12.** The Annual Facilities Special Tax prepayment is equal to the sum of the amounts computed pursuant to Steps 3, 5, 6, 9, and 10, less the amount computed pursuant to Step 11 (*"Prepayment Amount"*).

## **I. INTERPRETATION OF SPECIAL TAX FORMULA**

The City reserves the right to make minor administrative and technical changes to this document that does not materially affect the rate and method of apportioning the Special Taxes. In addition, the interpretation and application of any section of this document shall be left to the City's discretion. Interpretations may be made by the City by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment of Special Tax.

**ATTACHMENT 1**

**CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT No. 2003-1  
(FAIRVIEW VILLAGE)**

**IDENTIFICATION OF TAX ZONES**

**ATTACHMENT 2**

**CITY OF MODESTO  
COMMUNITY FACILITIES DISTRICT NO. 2003-1  
(FAIRVIEW VILLAGE)**

**MAXIMUM SPECIAL TAXES ASSIGNED TO EACH ORIGINAL PARCEL WITHIN  
EACH TAX ZONE**

Tax Zone	APN	Fiscal Year 2004-05 Maximum One- Time Facilities Special Tax [1]	Fiscal Year 2004-05 Maximum Annual Facilities Special Tax [2]	Fiscal Year 2004-05 Maximum Annual Maintenance Special Tax [3]
1	56-27-02	\$0	\$326,517	\$108,585

1. Beginning in January 2005 and each January thereafter, the Maximum One-Time Facilities Special Tax shall be adjusted by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum One-Time Facilities Special Tax shall become effective on the subsequent July 1.
2. Beginning in Fiscal Year 2005-06 and each Fiscal Year thereafter, the Maximum Annual Facilities Special Tax shall escalate by 2.0% of the amount in effect in the prior Fiscal Year.
3. Beginning in January 2005 and each January thereafter, the Maximum Annual Maintenance Special Tax shall be adjusted annually by the greater of (i) the percentage increase, if any, in the construction cost index for the San Francisco region for the prior twelve (12) month period as published in the Engineering News Record or other comparable source if the Engineering News Record is discontinued or otherwise not available, or (ii) four percent (4.0%). Each annual adjustment of the Maximum Annual Maintenance Special Tax shall become effective on the subsequent July 1.

Ord. No. 3348-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 1<sup>st</sup> day of June, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED: \_\_\_\_\_

  
MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR, City Clerk

Effective Date: July 1, 2004

ORDINANCE NO. 3349-C.S.

AN ORDINANCE AMENDING THE PRECISE PLAN FOR AREA NO. 13 OF THE VILLAGE ONE SPECIFIC PLAN, TO ALLOW FOR THE FOR THE CREATION OF 16 ADDITIONAL LOTS FOR PROPERTY LOCATED EAST OF ROSELLE AVENUE BETWEEN HILLGLEN AVENUE AND KODIAK DRIVE (LAGOS)

WHEREAS, the City Council, on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan requires that precise plans be adopted prior to any development in the Village One area, and

WHEREAS, the Village One Specific Plan is divided into 35 precise plan areas, and a precise plan is required prior to development in each area, and

WHEREAS, Ordinance No. 3247-C.S., which became effective on February 26, 2002, adopted a Precise Plan for Area No. 13 of the Village One Specific Plan, and

WHEREAS, Ordinance No. 3248-C.S., which became effective on February 26, 2002, rezoned the property encompassed by Precise Plan for Area No. 13 to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, an application was filed by John Lagos for an amendment to the Precise Plan for Area No. 13 to allow for the creation of 16 additional lots for property located east of Roselle Avenue, between Hillglen Avenue and Kodiak Drive, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on April 19, 2004, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, after considering public comments, the Planning Commission, by Resolution 2004-23, recommended to the City Council approval of an amendment to the Precise Plan for Area No. 13 subject to a condition that certain specified properties will be required to go through the second story review process as defined by Section 10-2.508 of the Modesto Municipal Code in order to ensure compatibility with the adjacent ranchettes, and

WHEREAS, said matter was set for a public hearing of the Council of the City of Modesto to be held on May 25, 2004, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and

WHEREAS, a duly noticed public hearing to consider said recommendations of the Planning Commission was held at the date and time above mentioned, and

WHEREAS, the Council declares that said amendment to the Precise Plan for Area No. 13 is required by public necessity, convenience, and general welfare for the following reason:

That the proposed amendment to Precise Plan No. 13 is consistent with the General Plan and Village One Specific Plan.

NOW, THEREFORE, the Council of the City of Modesto does ordain as follows:

**SECTION 1. APPROVAL OF AMENDMENT TO THE PRECISE PLAN.** The City Council has reviewed and considered the amendment to the Precise Plan for Area No. 13 of

the Village One Specific Plan to allow for the creation of 16 additional lots for property located east of Roselle Avenue between Hillglen Avenue and Kodiak Drive as recommended by the Planning Commission, and the Council does hereby approve said amendment to the Precise Plan for Area No. 13. A copy of said amendment is attached hereto.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 25<sup>th</sup> day of May, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, O'Bryant, Mayor Ridenour  
NOES: Councilmembers: None  
ABSENT: Councilmembers: Marsh

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3349-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 1<sup>st</sup> day of June, 2004, Councilmember Dunbar moved its final adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Marsh, O'Bryant

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR City Clerk

Effective Date: July 1, 2004

ORDINANCE NO. 3350-C.S.

AN ORDINANCE GRANTING COMCAST OF CALIFORNIA XII, INC. A 5-YEAR EXTENSION OF ITS NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE COMMUNICATIONS SYSTEM WITHIN THE CITY OF MODESTO SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THE AMENDMENT TO CABLE TELEVISION FRANCHISE RENEWAL AGREEMENT.

WHEREAS, the City Council adopted Ordinance No. 3223-C.S., which became effective on or after July 5, 2001, entitled, "An Ordinance of the City Council of the City of Modesto Granting United Cable Television Corporation a Renewal of its Nonexclusive Franchise To Construct, Operate and Maintain a Cable Communication System Within the City Of Modesto Subject to the Terms and Conditions Set Forth in the Franchise Renewal Agreement", and

WHEREAS, the current franchise provided for a 5-year extension of its term if Comcast completed the upgrade by July 5, 2003, and

WHEREAS, with the completion of the upgrade the parties have agreed that the franchise term would be extended an additional five years so that the total franchise term would be 15 years and will therefore expire on July 4, 2016,

NOW, THEREFORE, the Council of the City of Modesto does ordain as follows:

SECTION 1. EXTENSION OF TERM. The Base Renewal Term of the Franchise Agreement shall be fifteen (15) years from the effective date of the Franchise Agreement (i.e, until July 4, 2016).

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 1<sup>st</sup> day of June, 2004, by Councilmember Dunbar, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour


NOES: Councilmembers: None

ABSENT: Councilmembers: O'Bryant

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3350-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 8<sup>th</sup> day of June, 2004, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_



JEAN ZAHR, City Clerk

Effective Date: July 9, 2004

**CITY OF MODESTO  
ORDINANCE NO. 3351-C.S.**

**AN ORDINANCE ADOPTING THE 2004-05 OPERATING BUDGET AND THE INTERIM CAPITAL IMPROVEMENT PROGRAM FOR 2004-05 FOR THE CITY OF MODESTO, AND PROVIDING FOR CERTAIN TRANSFERS OF FUNDS**

WHEREAS, pursuant to the Charter of the City of Modesto, the City Manager has presented a Proposed Operating Budget and Interim Capital Improvement Program for the 2004-05 Fiscal Year to the Finance Committee on May 17, 2004, and

WHEREAS, the proposed budget document included fourteen staff papers addressing key budget issues, such as potential new revenue options, public safety needs, the condition of city streets, and unfunded long-term liabilities, and

WHEREAS, the Finance Committee has reviewed the Proposed Budget and Capital Improvement Program in a series of public workshops on May 17<sup>th</sup> – 20<sup>th</sup> and May 26<sup>th</sup> as well as at the regular Finance Committee meeting on May 24, 2004, and

WHEREAS, the Finance Committee has recommended modifications to the Proposed Budget and Capital Improvement Program and has forwarded its recommended budget to the full City Council; and

WHEREAS, the City Council has considered the recommendations of the Finance Committee, and

WHEREAS, in accordance with the City Charter, a duly noticed public hearing was held relating to the adoption of the proposed Budget, and

WHEREAS, the City Council has approved in concept a negative appropriation in the amount of \$2 million be included in the budget of the General Fund in recognition of expected under-expenditures by departments, with the allocation to departments to be determined during the course of the year by the Finance Committee and City Council, and

WHEREAS, the City Council has directed that the Fire department budget be adjusted to make available funding for new staffing at Fire Station #11 in the manner outlined in "Option 2" of Staff Paper 9 in the Proposed Budget document, and

WHEREAS, the City Council has reviewed the position control report prepared by staff, and

WHEREAS, the ultimate effect of the State of California's budget on the City of Modesto remains unclear, possibly requiring the City to revisit its budget at a point after the State's budget is finally adopted, and

WHEREAS, prior to any discussion of the budget and prior to the final adoption, the City Council by separate motion considered each CIP project that could be the source of a potential conflict of interest to one or more members of the City Council without the participation of those members, and

WHEREAS, copies of the proposed Budget have been and are available for inspection by the public at the office of the City Clerk,

NOW, THEREFORE, the Council of the City of Modesto does ordain as follows:

SECTION 1. ADOPTION OF BUDGET. That the operating budget, a copy of which is on file in the City Clerk's Office, is hereby adopted as the FY2004-05 Budget for the City of Modesto, and that the following amounts are hereby appropriated for expenditures and revenues in each specified fund:

Expense Fund	Appropriation Amount	Revenue Amount	Increase or (Use of Reserve)
General Fund	107,604,247	103,169,896	(4,434,351)
Gas Tax Fund	12,147,667	11,463,453	(684,214)
Local Transportation Fund	2,395,757	2,395,757	0
LTF Non-Motorized	81,000	139,858	58,858
Bus Fund	10,894,659	10,894,659	0
Water Fund	34,944,520	32,778,879	(2,165,641)
Sewer Fund	28,293,073	28,048,256	(244,817)
Storm Drain Fund	5,670,003	5,133,463	(536,540)
Airport Fund	826,286	826,286	0
Fleet Fund	7,389,986	7,389,986	0
Information & Technology	3,989,285	3,989,285	0
Building Services	1,963,463	1,963,463	0
Central Services	3,166,217	3,166,217	0
Insurance Funds	17,683,389	17,683,389	0
Employee Benefit Fund	31,388,332	32,324,853	936,521
Debt Service Funds	3,637,146	3,637,146	0
Capital Improvement Support	3,112,953	3,112,953	0
Solid Waste Fund	592,798	592,798	0
Ed & Gvt Communication	256,000	256,000	0
Elections	250,000	250,000	0
Operating Grants - Block	537,391	537,391	0
Operating Grants - Reimbursed	659,707	659,707	0
Traffic Safety Fund	584,000	625,000	41,000
Downtown Improvement District	191,452	192,000	548
CDBG - Direct	3,177,786	3,177,786	0
Housing Loan Program	1,200,200	1,200,200	0
HOME Program	1,474,055	1,474,055	0
Emergency Shelter Program	105,715	105,715	0
CFF Administration	226,900	226,900	0
Park Fund	349,000	483,842	134,842
CFD Administration	396,522	396,522	0

Parking Fund	847,991	866,876	18,885
Refunding Revenue Bonds	921,970	942,140	20,170
Golf Fund	2,240,260	2,240,260	0
Centre Plaza Fund	<u>1,626,249</u>	<u>1,626,249</u>	0
<b>Expense Fund Total</b>	<b>290,825,979</b>	<b>283,971,240</b>	

	Carryover Appropriations
Capital Projects	125,535,865
Multi Year Programs	<u>10,503,083</u>
	<b>136,038,948</b>

SECTION 2. ADOPTION OF BUDGET CONTROLS. That the budgetary control and authority policy defined in Exhibit "A" of this ordinance and incorporated here by reference is hereby adopted for the fiscal year 2004-05.

SECTION 3. ADOPTION OF INTERIM CIP. That the Interim Capital Improvement Program defined in Exhibit "B" of this ordinance and incorporated here by reference is hereby adopted as the Capital Improvement Program for the City of Modesto, and that funds identified as Additional Funding or New Projects are hereby appropriated for the corresponding projects and shall be part of the Budget for the fiscal year 2004-05 adopted hereby.

SECTION 4. ENCUMBRANCES. That the funds of the City of Modesto encumbered on June 30, 2004 are hereby appropriated for the purposes for which they are encumbered and shall be rolled over for the fiscal year 2004-05.

SECTION 5. MULTI YEAR PROGRAMS. That unexpended funds appropriated to Multi-Year Program on June 30, 2004 are hereby re-appropriated for the projects for which they were appropriated and shall be part of the Budget for the fiscal year 2004-05 adopted hereby.

SECTION 6. TECHNICAL ADJUSTMENTS. As part of the adopted budget the additional technical corrections as itemized in the Budget Adoption staff report shall also be included as part of the overall fiscal year 2004-05 adopted budget.

SECTION 7. EFFECTIVE DATE. Pursuant to Section 722 of the Charter of the City of Modesto, this ordinance shall go in effect and be in full force and operation immediately upon adoption.

SECTION 8. PUBLICATION. Copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing Ordinance was adopted at a regular meeting of the Council of the City of Modesto held on the 22nd day of June 2004, by Councilmember Hawn, who moved its adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the resolution adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh,  
O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

ATTEST: Jean Zahr  
JEAN ZAHR, City Clerk

(seal)

APPROVED AS TO FORM:

By: Mike Milich  
MIKE MILICH, City Attorney

**Exhibit "A"**  
**Budgetary Control & Authority**

The City of Modesto's Budgetary Control & Authority policy is adopted by the City Councils as a part of the resolution adopting the annual budget.

Basic Policy

The City budget is adopted at the fund level, and the authorized amount of expenditure for each fund is listed in the operating budget, a copy of which is on file with the Clerk's Office.

Multi-year appropriations, including Capital Improvement Program projects, authorized in previous years and not yet expended continue to be valid until explicitly revoked, notwithstanding the annual appropriation in the operating budget on file with the Clerk's Office.

City Manager's Authority

The City Manager may take the following budgetary actions without Council approval:

- Transfer appropriations between departments within a fund
- Transfer appropriations to or from salary line-items
- Appropriate unbudgeted departmental revenues
- Appropriate reserves approved for litigation on a case-by-case basis
- Appropriate remaining ABS reserves
- Revoke multi-year appropriations and close CIP projects

Finance Director's Authority

The Finance Director may take the following budgetary actions without Council approval:

- Appropriate unbudgeted grant interest
- Revise the allocation of Internal Service Fund charges between departments, provided that the total allocated amount shall not increase
- Make technical budget corrections to implement the intent of Council-approved actions and resolutions
- Transfer appropriations between sub-funds of a single fund.

### Department Directors' Authority

Department directors may take the following budgetary actions without Council approval:

- Transfer appropriations between non-salary line-items within a department, within a single fund
- Transfer appropriations between organizations and activities within a department, within a single fund

### Actions Reserved to Council

All other budgetary actions require the approval of the City Council. In addition, the following specific actions always require Council approval, any other provision of this policy notwithstanding.

- Appropriation of undesignated reserves
- Appropriation of non-departmental revenues
- Budgeting of inter-fund transfers
- Budgeting of inter-fund loans
- Creating or increasing any multi-year appropriation including CIP projects
- Addition of permanent staff positions

**Exhibit "B"**  
Interim CIP - Fiscal 2004-05

Fd-Agy-Orgn	Project Description	FY2003	FY2004	FY2005		Proposed
		Actuals Since Inception	Estimated Expenditures	Unobligated as of 4/30/04	Additonal Funding	FY2005 Total Budget
<b>FIRE</b>						
1320-180-M174	Fire Station #11 (Pelandale/Carver)	127,505	65,992	2,097,863		2,291,360
1300-180-N412	Rehab of Fire Station 1	14,805	2,012	710,549		727,366
			<b>TOTAL</b>			<b>3,018,726</b>
<b>POLICE</b>						
1300-140-J192	911 Communications Center	2,049,320	0	50,680		2,100,000
1300-120-J299	Police Headquarters-Restricted	13,819,976	915,010	232,876		14,967,862
1300-190-M168	Police Tactical Training Center	891,316	169,332	782	160,000	1,221,430
			<b>TOTAL</b>			<b>18,289,292</b>
<b>REDEVELOPMENT</b>						
9070-140-J887	Tenth Street Police Prop Acquisition (1)	13,184,473	0	(306,240)		12,878,233
9060-140-Q244	Downtown Aff Housing Land Acq	0	1,508	1,713,092		1,714,600
9080-140-Q260	Gallo Arts Center St. Improvement	105	644	601,251		602,000
9080-140-Q246	Kansas BP Conceptual Mstr Plan	192,759	(0)	212,241		405,000
9080-140-Q243	Kansas Ave. Bus/Park Prop. Opt	50,000	0	50,000		100,000
9080-140-K871	RDA Master Plan	0	0	120,000		120,000
			<b>TOTAL</b>			<b>15,819,833</b>
<b>CAPITAL FACILITIES DISTRICTS</b>						
<u>Village One</u>						
2600-020-Q314	700' Of 30 Rcp Merle	0	0	7,000		7,000
2600-020-A107	Floyd Ave-Oakdale To Roselle	0	198,091	39,909	3,873,000	4,111,000
2600-020-Q309	Force Main From West Basin	6,445	609,010	544,545		1,160,000
2600-020-Q301	Hillglen Ave 60 Rcp"	13,460	461,882	134,658		610,000
2600-020-Q315	Merle Road Improvement	54	(0)	9,946	110,000	120,000
2600-020-Q310	Pedestrian Overcrossing	9,077	4,293	107,630		121,000
2600-020-A114	Roselle/Floyd Roundabout	0	362	133,638	1,931,000	2,065,000
2600-430-M208	Sylvan Ave - Widen East Of Bob	46,087	10,049	58,864		115,000
2600-020-Q312	Sylvan/Roselle Intersection	762	154,312	181,926	1,550,000	1,887,000
2600-020-Q311	Sylva-Southside Symphony Park	8,004	17,904	404,092	391,000	821,000
2600-020-Q302	Village One Stormdrain Improve	99,433	3,038,267	348,300		3,486,000
			<b>TOTAL</b>			<b>14,503,000</b>
<u>Enterprise Park</u>						
2660-040-K040	Enterprise Business Park	1,480,204	0	172,758		1,652,962
			<b>TOTAL</b>			<b>1,652,962</b>

There will be an accounting adjustment at project closeout. Funding will be positive after the adjustment is made

**Exhibit "B"**  
Interim CIP - Fiscal 2004-05

Fd-Agy-Orgn	Project Description	FY2003	FY2004	FY2005		Proposed
		Actuals Since Inception	Estimated Expenditures	Unobligated as of 4/30/04	Additonal Funding	FY2005 Total Budget
<u>Carver/Bangs/Pelandale/Snyder</u>						
2670-020-A105	Bangs Ave-American To Carver	0	4,703	297		5,000
2680-020-A101	Landscaping E.Dale (Pelandale-Snyder)	0	0	24,000		24,000
2670-020-A106	MID Canalxing American & Bangs	0	334,648	2,352	297,000	634,000
2680-020-Q319	Prescott Rd Improvements	0	98,158	317,842		416,000
2680-020-A102	Snyder Ave (Prescott & Carver)	0	2,170	9,830		12,000
2680-020-Q318	Stormdrain Basins Pump	1,570	223,710	1,005,720		1,231,000
2680-020-A104	Tully Ctr MID 6 & Pelandale	0	0	28,000		28,000
2680-020-A103	Tully Front Imprv Pelandale-MID Lat6	0	0	22,000	35,000	57,000
			<b>TOTAL</b>			<b>2,407,000</b>
<b>TRAFFIC CIRCULATION</b>						
0700-160-H906	753 Detector Loops (Install)	41,577	0	239,923		281,500
0700-430-C926	7th St Bridge-Preliminary Desgn	238,427	558	48,518		287,503
2300-430-M203	9th Street Bridge Replacement	365,034	6,840,656	21,380,801		28,586,491
0510-430-K389	9th Street Pedestrian Enhancement	34,915	687	167,230		202,832
1410-160-M190	Advanced Traffic Mgmt System	103,002	(0)	496,998		600,000
1300-160-M282	Backup Battery Systems-Traffic	87,291	17,609	95,100		200,000
1410-430-M193	Briggsmore/Roselle-Impr To Merle	10,861	(0)	314,139		325,000
1410-430-A157	Briggsmore Soundwall	0	11,546	138,454		150,000
1410-430-N495	Briggsmore-Oakdale To Roselle	6,205	37,654	1,856,141		1,900,000
1410-430-A216	Briggsmore-Roselle To Claus	0	29,501	870,499	1,000,000	1,900,000
0700-430-K940	Carpenter Road Bridge-Seismic	123,612	(4,949)	4,881,337		5,000,000
1410-160-L912	CCTV Phase III	275,650	29,142	35,208		340,000
1410-480-M278	CFF - Streets Pelandale-Hwy 99	371,193	(1,184)	1,329,991		1,700,000
1410-430-Q210	Claratina - Coffee To Oakdale	0	0	2,672,000		2,672,000
1410-440-M283	Claus Road Plan Line	21,639	2,840	75,521		100,000
1410-430-Q201	Claus Road Right-Of-Way	1,756	366,664	31,580		400,000
1300-430-N121	College N. Of Bowen Rec. Lane	557	0	91,443		92,000
2300-430-N489	Community Gateways	0	29,808	292,692		322,500
2300-160-A153	Encina Improvements	0	8,952	356,048		365,000
2300-160-N064	Expand ATMS College Ave	663	(0)	99,337		100,000
0700-160-L129	Expand ATMS Northeast	594,079	(0)	17,349		611,428
0700-160-L130	Expand ATMS Northwest	75,809	408,020	312,171		796,000
2300-160-Q005	Federal (Hes) Grant Street Lights	0	0	178,000		178,000
2300-160-N068	Five Traffic Signal Mod - State	22,539	8,364	379,097		410,000
1410-430-N492	Floyd Widen - Oakdale-Roselle	64	0	1,199,936		1,200,000
2300-160-N066	Four New Signals - Pelandale	2,442	25,327	572,231		600,000
2300-160-N061	Four New Signals - Prescott	42,645	(12,289)	150,645		181,001
1410-430-Q203	Garner Road Plan Line	0	45,270	4,730		50,000

**Exhibit "B"**  
Interim CIP - Fiscal 2004-05

Fd-Agy-Orgn	Project Description	FY2003	FY2004	FY2005		Proposed
		Actuals Since Inception	Estimated Expenditures	Unobligated as of 4/30/04	Additonal Funding	FY2005 Total Budget
<b>TRAFFIC CIRCULATION (continued)</b>						
1410-430-A014	Hatch Rd Improvement at Dallas St	0	1,000	292,975		293,975
0700-430-F265	Kansas/Needham Overhead	12,867,789	4,037,778	436,433		17,342,000
0700-160-L904	Loop Detectors Citywide	25,880	79,047	245,073		350,000
2300-160-A265	Lower UPRR Crossings	0	23,497	231,503	2,146,419	2,401,419
2300-430-N157	McHenry Median Landscape Improve	0	0	120,000		120,000
2300-160-N067	Modify Traffic Signal - Standiford	25,399	195,444	48,581		269,424
1410-160-L133	Needham & L Signal Upgrade	68,325	0	21,675		90,000
1410-430-A155	Norseman City Limit-Yosemite	0	1,601	38,399		40,000
2300-160-N063	Operating CCTV System-2 Years	97,213	99,561	53,226		250,000
2300-160-A221	OTS Lighted Crosswalks Various	0	191,291	118,709		310,000
1410-160-L903	Paradise/Sttr/Martin Luther-Left Turn	936	0	60,064		61,000
1410-430-Q207	Pelandale - Reimburse For ROW	0	0	110,000		110,000
1410-430-N111	Pelandale -Coffee To Oakdale	112,418	13,725	123,857		250,000
1410-160-A156	Pelandale Interchange	0	0	150,000		150,000
1410-430-N496	Pelandale Intersection Improvement	186,846	55,122	1,128,032		1,370,000
1410-430-A159	Pelandale/McHenry Project Study	0	593	299,407		300,000
1410-430-A158	Pelandale-Sisk Intersection Improve	0	0	400,000		400,000
1410-430-Q209	Reimburse Development for Improve	0	0	55,000		55,000
0700-160-L029	Replace HighVolt Circ-Alley/College	138,752	123	6,125		145,000
2300-430-A223	Revegetation 9th Street Bridge	0	0	100,000		100,000
2300-160-N415	Roadway Illumination at 29 Intersections	13,826	167,723	45,451		227,000
2300-160-N416	Road Way Illumination McHenry	6,496	65,433	23,071		95,000
0700-160-L136	Roundabout Paradise & Sutter	0	221	14,779		15,000
2300-430-N130	RSTP 02/03 Scenic Pave Maint	76,653	757,187	315,160		1,149,000
0700-430-Q002	RSTP Coffee:Sylvan-Mable Design	120	91,645	16,235		108,000
2300-160-N060	Scenic/Bodem Right Turn Lane	21,596	3,246	150,159		175,001
2300-160-A009	Scenic at Lakewood Left Crosswalk	0	569	159,431		160,000
2300-160-A010	Sharon at Maid Marianne Roundabout	0	903	29,097		30,000
2300-430-M205	Sisk Road - Evergreen To Dale	1,812,875	806,006	749,319		3,368,200
1410-430-M188	Sr132 Phase I City Contribution	0	0	1,025,000		1,025,000
0700-160-M154	Standiford/Prescott Intersection Upg	0	0	50,000		50,000
1410-160-H982	T/S Synchro-Closed Circuit TV	746,537	9,060	60,244		815,841
2300-160-N062	Traffic Coordination Downtown	90	1,629	278,281		280,000
0700-480-L116	Traffic Ops Corp Yard Relocation	53,919	8,132	362,949		425,000
2300-160-N065	Traffic Signal Yosemite/McClure	0	4,400	75,600		80,000
1410-160-A224	Tully/Snyder Traffic Signal	0	110,485	19,515		130,000
2300-160-N498	New Traffic Signals Oakdale/Coffee	10,645	14,136	255,219		280,000
1410-160-N059	Upgrade ATMS Communication	33,666	37,377	58,957		130,000
1410-160-A154	Woodland Inters Imprv 9th/Carver	0	0	100,000		100,000
			<b>TOTAL</b>			<b>82,602,115</b>

**Exhibit "B"**  
Interim CIP - Fiscal 2004-05

Fd-Agy-Orgn	Project Description	FY2003	FY2004	FY2005		Proposed
		Actuals Since Inception	Estimated Expenditures	Unobligated as of 4/30/04	Additonal Funding	FY2005 Total Budget
<b>TRANSIT</b>						
6510-165-F768	Auto Vehicle Locaters Systm-MAX	26,312	17,463	416,225		460,000
6510-165-A044	Autom Vehicle Location System	0	0	300,000		300,000
6510-165-Q003	Fare Collection System Upgrade	0	189,708	10,292		200,000
6510-165-N591	Hybrid Electric Bus	0	0	660,000		660,000
6510-165-B911	New Bus Maintenance Facility	2,155,232	23,486	11,601,607		13,780,325
6510-165-A047	Purchase 2 Commute Buses	0	0	450,000		450,000
6510-165-K821	Purchase New Buses	39,693	4,498,695	567,769		5,106,157
6510-160-L102	Refurbish 1983/90 Gillig Buses	2,648,687	38,238	4,845		2,691,770
			<b>TOTAL</b>			<b>23,648,252</b>
<b>AIRPORT</b>						
6320-440-M275	Airport Expansion & Resurfacing	48,968	19,668	491,252		559,888
6320-160-M254	Airport Master Plan & EIR	207,465	63,178	29,889		300,532
6320-440-A008	Airport Terminal Prkng Lot Expansion	0	9,543	734,901		744,444
6320-440-N559	Emergency Airfield Generator	46,612	391,782	6,050		444,444
6320-440-Q143	Hangar T	0	55	366,611		366,666
6320-440-N127	Perimeter Access Road	67,293	(0)	222,707		290,000
6320-440-N020	Runway Pavement Evaluation	111,378	1,218,389	1,170,233		2,500,000
6320-440-N561	Security ID Display Upgrade	0	165	372,056		372,221
			<b>TOTAL</b>			<b>5,578,195</b>
<b>CENTRE PLAZA</b>						
6700-340-L018	Centre Plaza Energy Management	37,269	45,305	17,426		100,000
6700-310-N440	Centre Plaza Terrace Elevator	42,594	249,235	65,171		357,000
6710-340-A088	Modesto Centre Plaza Lighting	0	493	149,507	150,000	300,000
			<b>TOTAL</b>			<b>757,000</b>
<b>PARKS</b>						
2300-310-A012	1230 12th Street Retrofit	0	0	600,000		600,000
2300-310-A080	Briggsmore/99 Beautification	0	3,701	1,371,299		1,375,000
1350-310-Q238	Coffee/Claratina Neigh Park	114,572	1,037,452	61,206		1,213,230
2300-310-Q240	Conant/Rumble Sidewalk Improvement	10,460	29,205	310,335		350,000
1350-310-A081	Creekwood Park Shade Structure	0	796	74,204		75,000
1350-310-Q233	Freedom Neighborhood Park	5,818	112,904	839,278	400,000	1,358,000
1350-310-M176	Grogan Community Park Acquisition	2,481,334	198	922,886	458,000	3,862,418
2300-310-Q245	Hillside Dr-Orville Wright Park	334,771	38,060	4,269		377,100
2300-310-A013	Hillside Drive Imprv Kerr/S Santa Cruz	0	0	55,000		55,000
1400-310-K048	Infrastructure Preservation	109,472	0	27,528		137,000
1400-310-M185	Infrastructure Preservation	836,047	83,522	203,431		1,123,000
2300-310-N992	King Kennedy Center	49,137	208,516	23,347		281,000
2300-310-M182	Maddux Youth Ctr Improvement	115,901	278,921	1,927,240		2,322,062
2300-310-N112	Mark Twain Picnic Area	396	4,037	50,567		55,000
1350-310-N107	McKinney Colony Neighborhood	36,636	259,092	442		296,170

**Exhibit "B"**  
Interim CIP - Fiscal 2004-05

Fd-Agy-Orgn	Project Description	FY2003	FY2004	FY2005		Proposed
		Actuals Since Inception	Estimated Expenditures	Unobligated as of 4/30/04	Additonal Funding	FY2005 Total Budget
<b>PARKS (continued)</b>						
1300-310-M163	Modesto Westside Svce Center	65,334	34,175	1,587,376	1,849,000	3,535,885
1350-310-L002	Northeast McHenry Nbh Park Acq	1,139,257	(1)	5,684		1,144,940
2300-310-M186	Orville Wright Neighborhood Park	439,511	568,139	104,350		1,112,000
1350-310-N445	Park Master Plan/Construction	63,883	(0)	227,117		291,000
2300-310-N442	Play Equipment Upgrades	19,994	102,892	377,114		500,000
0520-430-L923	Scenic Ave Corridor	30,611	6,370	622,696		659,677
1350-310-M177	Sports Complex	128,458	96,982	198,560		424,000
1350-310-M178	Sutton Community Park	65,062	24,373	225,565		315,000
8910-310-M269	TRRP Gateway Construction	9,552	381,710	34,523		425,785
8910-310-N441	TRRP Gateway Project	0	21,923	1,230,077	75,000	1,327,000
1350-310-Q200	Ustach Neighborhood Park - All	96,256	1,168,555	78,869		1,343,680
0520-160-N045	Virginia Corridor Safe School Route	20,327	2,650	467,023		490,000
0520-310-M139	Virginia Corridor	244,331	274,965	704		520,000
2300-310-A087	Virginia Corridor Phase I Construction	0	6,686	275,314		282,000
			<b>TOTAL</b>			<b>25,850,947</b>
<b>JRM DRAIN</b>						
6280-430-N686	9th Street Storm Drainage	74,853	397,614	47,533		520,000
0800-140-L092	Kiernan Bus Prk Storm Drain Study	60	0	49,940		50,000
6280-440-Q231	Storm Drain Master Plan	218,714	218,272	13,014		450,000
6280-430-A213	Storm Drainage System Analysis	0	0	100,000	100,000	200,000
			<b>TOTAL</b>			<b>1,220,000</b>
<b>WASTEWATER</b>						
6210-480-M244	Cannery Segregation - Land Acq	44,448	1,150	2,454,402		2,500,000
6210-430-A215	DAF Dissolved Air Flootation	0	3,173	4,496,827	(4,096,826)	403,174
6210-430-A218	Deferred Maintenance Reduction	0	28,698	171,302		200,000
6210-430-A209	Engineering System Analysis	0	0	200,000	155,000	355,000
6230-480-J590	Equipment For WWC Bldg	3,950	0	101,050		105,000
6230-480-J889	Parallel 60" Outfall, Construct	2,210,115	0	112,465		2,322,580
6210-480-Q234	Repl/Rehabilitate Brick Manhole	6,904	5,911	87,185		100,000
6210-430-A049	Rose/Celeste/Scenic Sewer Trunk		0	439,000	400,000	839,000
6210-430-A212	Sewer Collection System Rehab	0	701	99,299		100,000
6210-430-N143	Shackleford Crossing	33,359	11,229	510,412		555,000
6210-480-L070	Thousand Oaks Lift Stn Genr Rep	57,483	15,315	127,203		200,000
6210-480-Q235	Village One-Extend Subtrunks	82,661	0	277,339		360,000
6210-480-F743	Wastewater Collection Maint Bldg	1,471,748	729,491	139,130		2,340,369
6210-430-A208	Wastewater Master Plan Update	0	1,013,006	36,994		1,050,000
			<b>TOTAL</b>			<b>11,430,123</b>

**Exhibit "B"**  
Interim CIP - Fiscal 2004-05

Fd-Agy-Orgn	Project Description	FY2003	FY2004	FY2005		Proposed
		Actuals Since Inception	Estimated Expenditures	Unobligated as of 4/30/04	Additonal Funding	FY2005 Total Budget
<b>WATER (2)</b>						
6100-480-Q211	Acquire Property/Install GAC A	419	14,690	284,891		300,000
6100-480-A020	Extend 12 Water Mains New Area	0	10,722	372,587	230,691	614,000
6160-430-A037	Grayson Wellhead Treatment	0	35,924	(11,924)		24,000
6100-430-A021	Groundwater Management	105	22,373	17,522		40,000
6160-430-A035	Groundwater Management (6160)	0	3,100	56,900		60,000
6150-440-Q248	Install Generator Tanks 6,7,8	948	(0)	319,052		320,000
6150-480-M224	Install New Services (6150)	1,213	55,012	3,775		60,000
6160-480-N650	Install New Wells	24,881	173,937	226,182		425,000
6100-480-M214	Install New Wells	266,431	860,005	657,076	720,000	2,503,512
6150-430-M231	Install New Wells (6150)	185,796	318,664	324,132		828,592
6100-480-L051	Install Well Carver/Bangs (6100)	33,452	13,665	352,883		400,000
6100-480-L050	Install Wells Village One (6100)	167,320	12,723	219,957		400,000
6100-430-A202	MRWTP Phase2 Exp Distrib Improve	0	327,789	3,371,208		3,698,997
6150-430-A205	MRWTP Phase2 Exp. Distrib Improve	0	134,700	190,300		325,000
6150-430-A220	Purch/Install Empire Generator	0	8,445	125,555		134,000
6100-480-Q213	Purchase And Install New Generator	9,128	14,895	244,977	139,000	408,000
6160-480-Q223	Purchase And Install New Generator	13,227	22,643	343,130		379,000
6150-480-M228	Purchase Generators (6150)	58,368	8,731	215,250		282,349
6160-480-M241	Purchase Generators (6160)	31,234	2,527	21,411		55,172
6100-440-M212	Recoat Tank Interior (6100)	97,379	0	112,621		210,000
6150-480-M232	Recoat Tank Interior (6150)	1,736	422	417,842	210,000	630,000
6100-480-M221	Replace & Upgrade Existing Wat	559,705	783,742	197,122		1,540,569
6150-480-M222	Replace & Upgrade Existing Wat	2,046,451	1,665,506	370,960	619,000	4,701,917
6160-480-M242	Replace & Upgrade Existing Wat	297,130	118,059	292,496	115,000	822,685
6100-480-M211	Replace Pumps (6100)	142,314	67,374	90,312		300,000
6150-480-M227	Replace Pumps (6150)	192,496	2,692	129,812		325,000
6100-480-A022	Replace/Upgrade Water Mains	0	127	399,873	750,000	1,150,000
6160-480-Q224	Retrofit Existing Water Meters	0	75,959	214,041		290,000
6100-480-A042	Satellite Corp Yard Wall	0	2,859	47,141	50,000	100,000
6160-480-Q225	System Analysis	4,638	31,461	8,451		44,550
6100-430-N639	System Analysis (6100)	149,230	256,300	30,220		435,750
6150-430-N637	System Analysis (6150)	56,199	77,300	13,701		147,200
6100-430-A025	Water Master Plan	0	0	210,000		210,000
6150-430-A032	Water Master Plan (6150)	0	0	150,000		150,000
6160-430-A040	Water Master Plan (6160)	0	0	100,000		100,000
6100-430-A054	Water Quality Study (6100)	0	0	100,000	150,000	250,000
6150-430-A055	Water Quality Study (6150)	0	0	30,000	50,000	80,000
6150-480-A203	Water Sys Sec Enhancement (6150)	0	10,000	32,000	70,000	112,000
6160-480-A207	Water Sys Sec Enhancement (6160)	0	10,000	18,000	31,000	59,000
6100-430-A200	Water System Analysis	0	1,199	148,801	158,000	308,000

(2) Projects currently are setup in each of the water zones and will be consolidated into one zone per Council direction

**Exhibit "B"**  
Interim CIP - Fiscal 2004-05

Fd-Agy-Orgn	Project Description	FY2003	FY2004	FY2005		Proposed
		Actuals Since Inception		Estimated Expenditures	Unobligated as of 4/30/04	Additonal Funding
<b>WATER (continued)</b>						
6150-430-A204	Water System Analysis (6150)	0	0	30,000	30,000	60,000
6160-430-A206	Water System Analysis (6160)	0	0	50,000	20,000	70,000
6100-480-A201	Water System Security Enhancement	0	34,016	147,984	202,000	384,000
6150-430-A030	Water Zone 2 (Mid Area) (6150)	0	6,358	98,642		105,000
6100-430-A023	Wellhead Treatment Zone 1	0	11,927	714,155	580,918	1,307,000
6160-430-N641	Wellhead Treatment Zone 3#288	0	14,184	110,816	3,600,000	3,725,000
			<b>TOTAL</b>			<b>28,875,293</b>
<b>MISCELLANEOUS</b>						
1300-140-J219	City/County Admin Bldg-JPA	17,861,263	0	614,102		18,475,365
1300-430-K859	Corporation Yard Land Acquisition	482,863	10,500	6,637		500,000
1300-120-Q237	Counter Reconstruction	0	0	200,000		200,000
7200-480-H028	Fleet Maintenance Facility	21,421	216,424	249,384		487,229
			<b>TOTAL</b>			<b>19,662,594</b>

Projects currently are setup in each of the water zones and will be consolidated into one zone per Council direction  
we go through the Capital Improvement Program budget process

<b>Existing Projects Total</b>	<b>89,473,558</b>	<b>40,305,909</b>	<b>106,826,663</b>	<b>18,709,202</b>	<b>255,315,332</b>
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New Projects 2004-5	Project Description	FY2003	FY2004	FY2005		Proposed
		Actuals Since Inception		Estimated Expenditures	Unobligated as of 4/30/04	Additonal Funding
<b>AIRPORT</b>						
	Airport Improvements and FAA planning Documents				905,000	905,000
<b>PARKS</b>						
	Claus Neighborhood Park				113,000	113,000
<b>TRAFFIC CIRCULATION</b>						
	Northwest Modesto Street Improvements				110,000	110,000
<b>TRANSIT</b>						
	Fiscal Year 2004-05 Bus Purchase				944,350	944,350
	<b>New Projects Total</b>				<b>2,072,350</b>	<b>2,072,350</b>

TOTAL NEW APPROPRIATION

20,781,552

## EXHIBIT "B"

**CAPITAL IMPROVEMENTS SUMMARY - WATER**  
**Pay As You Go - Cash Projects**

All Zones

PROJECT	2004 2005	2005 2006	2006 2007	2007 2008	2008 2009	TOTAL BUDGET
TID Surface Water Supply Project	500	2,500	-	-	-	3,000
Extend Water Mains	555	574	598	574	594	2,895
Strengthen and Replace Water System	1,669	1,759	1,726	1,767	1,568	8,489
Install New Well	720	2,554	792	831	871	5,768
Wellhead Treatment	5,328	1,107	3,229	621	4,541	14,826
Purchase and Install New Generators	139	277	143	285	146	990
Water System Security Enhancements	303	318	333	351	-	1,305
Groundwater Management Plan	-	-	-	-	250	250
Urban Water Management Plan	150	-	-	-	190	340
Water Master Plan	-	-	-	-	650	650
Water System Evaluation	208	216	224	233	242	1,123
Storage Tanks	-	-	6,130	-	-	6,130
Water Meters	885	885	885	885	885	4,425
Remove Water Tanks	-	150	-	150	-	300
Satellite Corporation Yard Fence	50	-	-	-	-	50
Water Quality Study	240	-	-	-	-	240
Recoat Tank Interior	210	210	-	-	-	420
	10,957	10,550	14,060	5,697	9,937	51,201

ORDINANCE NO. 3352-C.S.

AN ORDINANCE AMENDING SECTION 8-3-9 OF THE ZONING MAP TO REZONE FROM HIGHWAY COMMERCIAL ZONE, C-3, TO PLANNED DEVELOPMENT ZONE, P-D(566), PROPERTY LOCATED AT 3969 McHENRY AVENUE. (SIGNATURE THEATRES)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 8-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Highway Commercial Zone, C-3, to Planned Development Zone, P-D(566):

C-3 to P-D(566)

All that portion of the northeast 3 of the northeast 3 of section 8, Township 3 South, Range 9 East, M.D.B. & M., City of Modesto, County of Stanislaus, State of California, described as follows:

Parcel A of that certain Map filed in Vol. 25 of Parcel Maps at Page 37, Stanislaus County Records;

Also including the Westerly 2 of McHenry Avenue, all being adjacent to the above-described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(566) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. 14-screen movie theater and associated off-street parking as shown on the approved site plan.

SECTION 3. ZONING MAP. Section Map 8-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22nd day of June, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

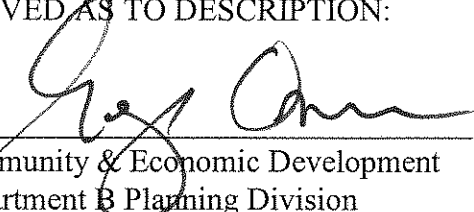
By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community & Economic Development  
Department B Planning Division

Ord. No. 3352-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14<sup>th</sup> day of July, 2004, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Ridenour

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR, City Clerk

Effective Date: August 12, 2004

ORDINANCE NO. 3353-C.S.

AN ORDINANCE APPROVING THE THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MODESTO AND NORMAN GALAS, JUNE GALAS, STANLEY GALAS, BONNIE K. GALAS AND DEL VALLE CAPITAL CORPORATION, INC. RELATING TO ALLOWING THE ASSIGNMENT OF RIGHTS, ENTITLEMENTS, DUTIES, AND OBLIGATIONS TO THIRD PARTY DEVELOPERS.

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements, and

WHEREAS, by City Council Resolution No. 91-185, adopted on March 26, 1991, the City Council established procedures and requirements for the consideration of development agreements, and by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council revised said procedures and requirements and superseded Resolution No. 91-185, and

WHEREAS, on September 16, 1997, the City Council introduced Ordinance No. 3061-C.S. which approved a Development Agreement with Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc. to allow the City to extend sewer service to the property without holding an advisory vote as required by Measure M, and

WHEREAS, on November 26, 2002, the City Council introduced Ordinance No. 3275-C.S. which approved an amended Development Agreement with Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc. to extend the life of the Galas Brothers vesting tentative subdivision map to June 30, 2003, and containing

provisions related to the provision of affordable and accessible housing and infrastructure master planning, and

WHEREAS, on June 26, 2003, the City Council introduced Ordinance No. 3302-C.S. which approved a Second Amendment to the Development Agreement with Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc. to extend the life of the Galas Brothers vesting tentative subdivision map to December 31, 2003, and containing provisions related to the provision of affordable and accessible housing and infrastructure master planning, and

WHEREAS, Del Valle Capital Corporation, Inc. has applied for a Third Amendment to said Development Agreement to allow assignment of rights, entitlements, duties, and obligations on certain lots to third party developers, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on June 7, 2004, in the Tenth Street Place Chambers, located at 1010 10th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the requested Third Amendment to said Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 2004-29, adopted on June 7, 2004, recommended to the City Council approval of the proposed Third Amendment to the Development Agreement between the City of Modesto and Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc., and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m., on June 22, 2004 in the Tenth Street Place Chambers, located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the requested Third Amendment to the Development Agreement between the City of Modesto and Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc., to allow the assignment of rights, entitlements, duties, and obligations on certain lots to third party developers, and

WHEREAS, Section 65867.5 of the Government Code provides that a development agreement is a legislative act which shall be approved by ordinance and is subject to referendum, and

WHEREAS, said Government Code section further provides that a development agreement or any amendment thereto, shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan,

NOW, THEREFORE, BE IT RESOLVED the Council of the City of Modesto does ordain as follows:

SECTION 1. FINDINGS. The Council of the City of Modesto hereby finds and determines as follows:

1. The proposed Third Amendment to the Development Agreement is consistent with the General Plan and the Fairview Village Specific Plan of the City of Modesto because the resulting development would be consistent with the land uses of the Fairview Village Specific Plan and the proposed Third Amendment to the Development Agreement will continue to ensure that adequate infrastructure planning and construction is done prior to development, as required by the General Plan.

2. The proposed Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 91-185, which establishes procedures and requirements for the consideration of development agreements; the City's subdivision and zoning provisions of the Modesto Municipal Code, and Government Code Section 65864 et seq.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The Third Amendment to the Development Agreement between the City of Modesto and Norman Galas, June Galas, Stanley Galas, Bonnie K. Galas and Del Valle Capital Corporation, Inc., to allow the assignment of rights, entitlements, duties, and obligations on certain lots to third party developers is hereby approved. A copy of the Third Amendment to the Development Agreement is on file in the Office of the City Clerk.

SECTION 3. EXECUTION BY CITY. The City Manager or his authorized designee is hereby authorized to execute said Third Amendment to the Development Agreement on behalf of the City of Modesto.

SECTION 4. RECORDING OF AGREEMENT. Pursuant to Government Code Section 65868.5, no later than ten (10) days after the City approves said Third Amendment to the Development Agreement, the City Clerk is hereby directed to record with the County Recorder a copy of the Third Amendment to the Development Agreement which shall describe the land subject thereto.

SECTION 5. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 6. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in

the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 22<sup>nd</sup> day of June, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Keating, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3353-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14<sup>th</sup> day of July, 2004, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Ridenour

APPROVED:   
MAYOR JIM RIDENOUR

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: August 12, 2004

ORDINANCE NO. 3354-C.S.

AN ORDINANCE ADDING CHAPTER 17 ENTITLED  
“REGULATION OF OFF-SITE AUTOMOBILE SALES” TO  
TITLE 4 OF THE MODESTO MUNICIPAL CODE.

The Council of the City of Modesto does ordain as follows:

SECTION 1. LEGISLATIVE INTENT. This ordinance is intended to control and regulate the temporary use of land for the purpose of conducting off-site automobile sales. The Council finds that this use of land, although short lived, creates impacts associated with site accessibility, traffic congestion, parking, noise, excessive signage, and the need to provide for sanitation facilities. The Council finds and determines that when left unregulated, this specific type of sale has an adverse impact on public health, safety and welfare. Accordingly, it is the further intent of this ordinance to protect the public health, safety and welfare by ensuring that such temporary automobile sales shall be compatible with surrounding land uses, protecting the rights of adjacent residences and land owners, and minimizing any adverse affects on surrounding properties and the environment.

SECTION 2. AMENDMENT OF CODE. Chapter 17 entitled “Regulation of Off-site Automobile Sales” is hereby added to Title 4 of the Modesto Municipal Code to read as follows:

CHAPTER 17 – REGULATION OFF-SITE AUTOMOBILE SALES

4-17.01. DEFINITIONS.

For the purposes of this chapter, the following definitions shall apply:

- (a) “Automobile” shall mean cars, light trucks, motorcycles, mopeds, motorscooters, and other similar forms of motorized vehicular transport.
- (b) “Director” shall mean the Parks, Recreation & Neighborhoods Director.

- (c) “Off-site sales” shall mean any sale of three (3) or more automobiles at a location not open for automobile sales business during regular business hours on a year-round basis.
- (d) “Temporary use” shall mean any use for three (3) or fewer consecutive days.

#### 4-17.02. DECISION MAKER.

Decisions as to the approval or denial of temporary use permits for off-site automobile sales shall be made by the Director or such individual as is designated by the Director.

#### 4-17.03. LIMITATION ON NUMBER.

Issuance of temporary use permits for off-site automobile sales by the Director shall be limited to four (4) permits total per calendar year in the City as a whole.

#### 4-17.04. FINDINGS.

The following findings must be made prior to the approval of a temporary use permit for off-site sales by the Director:

- (a) The proposed temporary automobile sale will be located, operated, and maintained in a manner consistent with each of the applicable provisions of the Modesto Municipal Code, including the provisions of this chapter.
- (b) The proposed site shall be fully improved and shall be located only within the following zones:
  - (1) Commercial/Industrial Zone (CM);
  - (2) Light Industrial Zone (M-1);
  - (3) Heavy Industrial Zone (M-2); and
  - (4) Business Park Zone (B-P).
- (c) The proposed temporary automobile sale will not adversely affect adjacent structures and uses or the surrounding neighborhood.

- (d) The proposed temporary automobile sale will not adversely affect the circulation and flow of vehicular and pedestrian traffic in the immediate area.
- (e) The proposed temporary automobile sale will not create a demand for additional parking which cannot be met safely and efficiently in existing parking areas.
- (f) The permit's applicant has paid all required fees and deposits owed to the City, both related to the applied for permit and to any other matter, in a timely manner, including any past due payments for other permits, fees, or taxes, if applicable.
- (g) The applicant has the written permission of the landowner to use the property for the purpose of conducting a temporary automobile sale.

#### 4-17.05. CONDITIONS.

In authorizing an application for a temporary use permit for off-site automobile sales, the Director may impose conditions that are deemed necessary to ensure that the permit will be in accordance with the findings required by Section 4-17.04. These conditions may include, but are not limited to:

- (a) The temporary off-site automobile sales use will be limited to the dates and times (or period of time), and extent prescribed by the Director.
- (b) Provisions for fire protection and fire vehicle access will be made as prescribed by the Fire Chief.
- (c) If the temporary off-site automobile sales use is to take place in a parking lot, the use shall not reduce the number of off-street parking spaces below the minimum number specified for the zone the use is proposed to be located in.
- (d) Regulation of nuisance factors such as prevention of glare or direct illumination of adjacent properties, noise, vibration, smoke, dust, dirt, odors, gases, and heat.
- (e) Regulation of temporary structures and facilities, including placement, height, size, and location of equipment, tents, or open spaces including buffer areas.
- (f) Provision of sanitary facilities, solid waste collection, and disposal.
- (g) Provision of security or safety measures, including adequate lighting.

- (h) Regulation of the size and location of signs so that they conform to the other provisions of the Modesto Municipal Code.
- (i) Submission of a performance bond, letter of credit, or cash deposit in an amount to be determined by the Director, to assure that any temporary facilities or structures used for the proposed temporary use will be removed from the site following the event and that the property will be restored to its former condition.
- (j) A cash deposit in an amount to be determined by the Finance Director as security for payment of the business license taxes required by this Code.
- (k) A provision requiring that the site will be continuously maintained free of weeds, litter, and other debris.
- (l) Any other condition which will ensure the operation of the proposed temporary off-site automobile sales use in an orderly and efficient manner and in accordance with the intent and purpose of this chapter.

#### 4-17.06. EFFECTIVE DATE AND DURATION.

A temporary use permit for off-site automobile sales shall be effective for the date specified by the Director, not to exceed three (3) days plus such time as the Director approves for setting up and dismantling the site, unless otherwise specified in this chapter.

#### 4-17.07. DECISION.

For all temporary use permits for off-site automobile sales, the Director shall prepare a written decision within twenty (20) business days of the date a completed application is filed. The decision shall contain the findings of fact upon which the decision is made.

#### 4-17.08. REVOCATION.

A temporary use permit for off-site automobile sales may be revoked by the Director effective immediately upon verbal or written notice for violation of the terms of the permit.

4-17.09. MODIFICATION.

The Director may require changes in the terms or conditions of an approved temporary use permit for off-site automobile sales at any time while it is in effect, if needed, to ensure that the use may continue to operate consistent with the intent and purpose of this chapter.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 4th day of August, 2004, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

APPROVED: \_\_\_\_\_



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich  
MICHAEL D. MILICH, City Attorney

Ord. No. 3354-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of September, 2004, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR, City Clerk

Effective Date: October 8, 2004

ORDINANCE NO. 3355-C.S.

AN ORDINANCE AMENDING CHAPTER 10 OF TITLE 5 OF  
THE MODESTO MUNICIPAL CODE RELATING TO STORM  
WATER MANAGEMENT AND DISCHARGE CONTROLS.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Chapter 10 of Title 5 of the Modesto  
Municipal Code is hereby amended to read as follows:

CHAPTER 10. STORM WATER MANAGEMENT AND DISCHARGE CONTROLS

ARTICLE 1. TITLE, PURPOSE AND GENERAL PROVISIONS.

5-10.101. TITLE.

This chapter shall be known as the City of Modesto Storm Water Management  
and Discharge Controls Ordinance and may be so cited.

5-10.102. INTENT AND PURPOSE.

- (a) The intent of this chapter is to protect and enhance the water quality of the City's watercourses, water bodies, and wetlands pursuant to, and consistent with, the Federal Water Pollution Control Act (Clean Water Act, 33 USC Section 1251 et seq.), Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.) and National Pollutant Discharge Elimination System (NPDES) Permit No. CAS083526, as such permit is amended and/or renewed by the California Regional Water Quality Control Board (Regional Board).
- (b) The purpose of this chapter is to ensure, protect, and promote the health, safety, general welfare, and protection of property for City of Modesto citizens by prescribing regulations to effectively prohibit non-storm water discharges into the City municipal separate storm sewer system (MS4), and to reduce the discharge of pollutants in storm water to the maximum extent practicable by:
  - (1) Regulating non-storm water discharges to the City's MS4.
  - (2) Controlling the discharge to City's MS4 from spills, overland flow, dumping, or disposal of materials other than storm water.

- (3) Reducing pollutants in storm water discharges from the City's MS4 to the maximum extent practicable.
- (4) Minimizing damage to property and public rights-of-way.
- (5) Minimizing degradation of the water quality of watercourses, and the disruption or pollution of natural or City authorized drainage flows caused by the activities of clearing and grubbing, grading, filling and excavating of land as well as sediment and pollutant runoff from other construction related activities.
- (6) Controlling industrial and commercial pollutant discharges to City's MS4.

#### 5-10.103. DEFINITIONS.

The following words and phrases used in this chapter shall have the definitions assigned below, unless otherwise specified. Words and phrases used in this chapter and not otherwise defined shall be interpreted as defined in the regulations of the U.S. Environmental Protection Agency to implement the provisions of the Federal Clean Water Act, and as defined by the State Water Resources Control Board to implement the Porter-Cologne Act in the State Water Code.

- (a) "Applicant" means any person who submits an application for a permit pursuant to this chapter.
- (b) "Best Management Practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent, eliminate, or reduce the pollution of the receiving waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff spillage or leaks, sludge or waste disposal, or drainage from raw material storage as set forth in the California Stormwater Quality Association AStormwater Best Management Practice Handbooks for Municipal, Industrial and Commercial, and Construction and New Development and Redevelopment,@ and such other practices as the City may specify from time to time to prevent, control or reduce the discharge of pollutants directly or indirectly to City's MS4.
- (c) "CFR" means Code of Federal Regulations.
- (d) "City" means the City of Modesto.

- (e) “City Engineer” means the City engineer or his/her designee(s) including, but not limited to enforcement officers authorized by the City Engineer.
- (f) “City specifications” means the City Improvement Standards, City Standard Construction Specifications and other standards included in applicable City ordinances, regulations, manuals, and guidelines as amended from time to time.
- (g) “Civil engineer” means a professional engineer in the branch of civil engineering holding a valid certificate of registration issued by the State of California.
- (h) “Clearing and grubbing” means moving or removing by manual or mechanical means trees, vegetation, and/or the top four (4) inches or greater of soil for purposes of construction. Clearing and grubbing does not include lawn mowing or tree trimming.
- (i) “Compaction” means the act of compacting or consolidating soil and rock material to specified density, and the resulting compacted state of the material.
- (j) “Construction site” means any land area on which the activity of clearing and grubbing, grading, excavating, filling, construction or development activity is occurring.
- (k) “Council” means the City Council of the City of Modesto.
- (l) “Development” means any construction, rehabilitation, redevelopment or reconstruction of any public or private residential project, industrial, commercial, retail, and all other nonresidential projects, public or private, or grading for future construction, for which either discretionary land use approval or any permit is required.
- (m) “Director” means the Public Works Director or his/her designee(s) including, but not limited to enforcement officers authorized by the Director.
- (n) “Discharge” means any release, spill, leak, pumping, flow, escape, leaching, including subsurface migration to groundwater, dumping, or disposal of any gas, liquid, semi-solid, or solid substance, whether accidental or intentional.
- (o) “Discharger” shall mean any person causing or permitting a discharge or having control or ownership over property from which a discharge issues.

- (p) “Engineering geology” means the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.
- (q) “Erosion” means the transport of the ground surface or soil as a result of the movement of the wind or water.
- (r) “Erosion control measures” means seeding, mulching, vegetative buffer strips, sod, plastic covering, burlap covering, watering, and other measures which control the movement of the ground surface or soil.
- (s) “Grade” is the elevation of the ground surface as measured from a known vertical control.
- (t) “Grading” includes the act or result of digging, excavating, transporting, spreading, depositing, filling, compacting, settling, or shaping of land surfaces and slopes, and other operations, performed by or controlled by human activity involving physical movement of rock or soil.
- (u) “Hazardous substances” means those materials listed in Title 40 of the Code of Federal Regulations (40 CFR) Part 117 and/or 40 CFR Part 302 and/or Division 20 of the California Health and Safety Code.
- (v) “Illicit connection” means any physical connection to the City’s MS4 which has not been permitted by the City, or any physical surface or subsurface condition of property through which the discharge of any pollutant to the MS4 may occur.
- (w) “Illicit discharge” means any discharge to the City’s MS4, or an upstream flow tributary to the MS4, that is not composed entirely of storm water runoff except discharges made pursuant to a National Pollutant Discharge Elimination System (NPDES) permit, or other regulatory requirement issued pursuant to the Porter-Cologne Water Quality Control Act if an NPDES permit is not required or applicable. Illicit discharges include, but are not limited to:
  - (1) Sewage overflows;
  - (2) Discharges of wash water resulting from the hosing or cleaning of gas stations, vehicle repair services, or other types of automotive service facilities;

- (3) Discharges resulting from storage, cleaning, repair, or maintenance of any type of equipment, machinery, or facility including motor vehicles, cement-related equipment, and port-a-potty servicing, etc.;
  - (4) Discharges of wash water from mobile operations such as mobile vehicle washing, steam cleaning, power washing, and carpet cleaning, etc.;
  - (5) Discharges of wash water from the cleaning or hosing of impervious surfaces in municipal, industrial, and commercial areas including parking lots, streets, sidewalks, driveways, patios, plazas, work yards and outdoor eating or drinking areas, etc.;
  - (6) Discharges of runoff from material storage areas containing equipment, chemicals, fuels, grease, oil, or other hazardous materials;
  - (7) Discharges of pool or fountain water containing chlorine, biocides, or other chemicals; discharges of pool or fountain filter backwash water;
  - (8) Discharges of sediment, pet waste, vegetation clippings, or other landscape or construction-related wastes;
  - (9) Discharges of food-related wastes (e.g., grease, fish processing, swill, and restaurant kitchen mat and trash bin wash water, etc.);
  - (10) Discharge of runoff from the washing of toxic materials from paved or unpaved areas; and
  - (11) Discharge of material such as litter, landscape debris, construction debris, or any pesticides.
- (x) “Local Stormwater Pollution Prevention Plan (local SWPPP)” means a subset of the state required SWPPP for projects that will result in soil disturbance of one acre or greater or are located within, directly adjacent to, or discharge directly to an environmentally sensitive area. A local SWPPP should contain the following:
- (1) Vicinity map showing roadways, construction site perimeter, and geographical and topographical features;

- (2) Signed statement that BMPs will be installed, monitored, and maintained properly;
  - (3) Site map showing applicable construction site conditions (drainage pattern, impervious areas, BMP locations, etc.);
  - (4) Description of erosion and sediment control BMPs as well as source and treatment control BMPs as applicable; and,
  - (5) Contact information of person responsible for implementing the local SWPPP.
- (y) “Municipal NPDES permit” means a NPDES permit issued to a government agency or agencies for the discharge of storm water from a storm drain system to a water of the United States.
  - (z) “Municipal separate storm drain (MS4)” means a conveyance or system of conveyances owned, operated or controlled by the City designed or used to convey storm water to waters of the United States. City’s MS4 includes, but is not limited to, rockwells, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels or storm drains.
  - (aa) “National Pollutant Discharge Elimination System (NPDES) permit” shall mean a discharge permit issued by the State Water Resources Control Board, Regional Water Quality Control Board, or the U.S. Environmental Protection Agency, in compliance with Section 402(p) of the Federal Clean Water Act.
  - (ab) “Non-commercial vehicle washing” means the washing and rinsing of passenger vehicles on private property in which no commercial for profit enterprise is being conducted in the washing of those vehicles.
  - (ac) “Non-storm water discharge” means any discharge to the City’s MS4 that is not entirely composed of storm water made pursuant to an NPDES permit.
  - (ad) “Notice of intent” is the formal notification to the Regional Water Quality Control Board or State Water Resources Control Board by the applicant that either a construction or industrial activity will occur in compliance with the conditions of a general permit issued by the applicable agency.
  - (ae) “NPDES general construction permit” means general permit No. CAS000002 issued by the State Water Resources Control Board and any

future changes or amendments subsequent thereto, or any other general permit issued by the State Water Resources Control Board, Regional Water Quality Control Board, or U.S. Environmental Protection Agency that regulates discharges of storm water and authorized non-storm water discharges to surface waters associated with construction activity including clearing, grading, and excavation that result in land disturbance of equal to or greater than one acre or is part of a larger common plan development or sale.

- (af) “NPDES general industrial permit” means general permit No. CAS000001 issued by the State Water Resources Control Board and any future changes or amendments subsequent thereto, or any other general permit issued by the State Water Resources Control Board, Regional Water Quality Control Board, or U.S. Environmental Protection Agency that regulates storm water discharges and authorized non-storm water discharges from specific categories of industrial facilities identified within the permit, stormwater discharges and authorized non-storm water discharges from facilities as designated by the Regional Water Quality Control Board, and stormwater discharges and authorized non-storm water discharges from other facilities seeking general permit coverage, excluding construction activities.
- (ag) “Person” means any natural person, firm, association, club, organization, corporation, partnership, business trust, city, county, special district, state or federal governmental entity, joint venture, estate, cooperative association, company or other entity, or the agent, employee or representative of any of them, which is recognized by law as the subject of rights or duties.
- (ah) “Pollutant” means those pollutants defined in Section 502(6) of the Federal Clean Water Act (33 U.S.C. Section 1362(6), or incorporated into California Water Code Section 13373. Pollutant also means hazardous substances defined in Section 13050(p) of the California Water Code, and any contaminant which can degrade the quality of the receiving waters by altering pH, total suspended or settleable solids, biochemical oxygen demand, chemical oxygen demand, nutrients, or temperature, including, but not limited to:
  - (1) Artificial materials, chips or pieces of natural or man-made materials (including, but not limited to floatable plastics, wood or metal shavings).
  - (2) Household waste (including, but not limited to trash, paper, plastics, lawn clippings and yard wastes; animal fecal materials;

pesticides, herbicides and fertilizers; used oil and fluids from vehicles, lawn mowers and other common household equipment).

- (3) Metals (including, but not limited to cadmium, lead, zinc, copper, silver, nickel, chromium) and non-metals (including, but not limited to phosphorus and arsenic).
  - (4) Petroleum hydrocarbons (including, but not limited to fuels, lubricants, hydraulic fluids, surfactants, waste oils, solvents, coolants and grease).
  - (5) Soil, sediment and particulate materials.
  - (6) Animal waste (including, but not limited to discharge from confinement facilities, kennels, pens, recreational facilities, stables, show facilities, and polo fields).
  - (7) Substances having characteristics such as a pH less than 5 or greater than 8.5 or unusual coloration, or turbidity, or containing fecal coliform, fecal streptococcus, enterococcus, or other pathogens.
  - (8) Waste materials and wastewater generated on construction sites and by construction activities (including, but not limited to painting, staining; use of sealants, glues, limes; excessive pesticides, fertilizers or herbicides; use of wood preservatives and solvents; disturbance of asbestos fibers, paint flakes or stucco fragments; application of oils, lubricants, hydraulic, radiator or battery fluids; construction equipment washing, concrete pouring and cutting slurry wastes, and cleanup wash water or use of concrete detergents; steam cleaning or sand blasting residues; use of chemical decreasing or diluting agents; and super chlorinated water generated by potable water line flushing).
  - (9) Materials causing an increase in biochemical oxygen demand, chemical oxygen demand or total organic carbon.
  - (10) Materials which contain base/neutral or acid extractable organic compounds.
- (ai) "Premises" means any building, lot, parcel of land, land or portion of land whether improved or unimproved.

- (aj) “Runoff” is surface runoff and drainage related to storm events, snow melt, street wash waters related to street cleaning or maintenance and other non-storm waters introduced into the storm drain system.
- (ak) “Sediment” means soil or earth material deposited by water.
- (al) “Sediment control measures” means dikes, sediment detention traps, sediment detention basins, filters, fences, barriers, swales, berms, drains, check dams, and other measures which control sediment.
- (am) “Significant redevelopment” means the creation or addition of at least 5,000 square feet of impervious surfaces on an already developed site.
- (an) “Site” means a parcel or parcels of real property owned by one (1) or more than one person on which activity regulated by this chapter is occurring or is proposed to occur.
- (ao) “Slope” is an inclined ground surface the inclination of which is expressed as a percent.
- (ap) “Storm water” or “Stormwater” means water that originates from atmospheric moisture (rainfall, hail, snow or snow melt) that falls onto land, water or other surfaces, and any surface flow, runoff or drainage associated with such atmospheric events.
- (aq) “Stormwater Management Plan (SWMP)” is a management program mandated in 40 CFR 122.6(d)(2)(iv) as set forth in the City’s NPDES permit, describing the framework for management of storm water discharges during the term of the NPDES permit.
- (ar) “Storm Water Pollution Prevention Plan (SWPPP)” is a plan required by the State Water Resources Control Board, Regional Water Quality Control Board, or U.S. Environmental Protection Agency which sets forth the site map, identifies the activities that have the potential to pollute storm water which may enter the City’s MS4, describes the proposed BMPs to be implemented by the discharger, and contains a description of any other requirement the State Water Resources Control Board, Regional Water Quality Control Board, or U.S. Environmental Protection Agency requires the discharger to list in the facilities SWPPP.
- (as) “Storm water runoff” means surface runoff and drainage of storm water.
- (at) “Structure” means anything constructed or erected which requires location on the ground or attached to something having location on the ground.

- (au) “Uncontaminated pumped groundwater” is groundwater that does not cause or contribute to the exceedence of an adopted water quality standard.
- (av) “Watercourse” means a river, stream, creek, basin, lake, pond, waterway, or channel, natural or manmade, having a defined bed and banks. Whenever a watercourse consists of an ordinary channel, and in addition thereto, an overflow channel, the watercourse shall be deemed to include all property lying between the banks of the overflow channel.
- (aw) “Waters of the State” means any surface water or groundwater, including saline waters, within the boundaries of the state.
- (ax) “Waters of the United States or waters of the U.S.” means:
  - (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
  - (2) All interstate waters, including interstate “wetlands;”
  - (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
    - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
    - (ii) From which fish or shell fish are or could be taken and sold in interstate or foreign commerce; or
    - (iii) Which are used or could be used for industrial purposes of industries in interstate commerce.
  - (4) All impoundments of waters otherwise defined as waters of the United States under this definition;
  - (5) Tributaries of waters identified in paragraphs (1) through (4) of this definition;
  - (6) The territorial sea; and

- (7) “Wetlands” adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1) through (6) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of Clean Water Act (other than cooling ponds as defined in 40 CFR 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area’s status as prior converted cropland by any other federal agency for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA. Notwithstanding the definition incorporated herein, all interpretations, changes and amendments to such definition shall be made in accordance and consistent with 40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, and 401.

- (ay) “Wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs and marshes.

#### 5-10.104. RESPONSIBILITY FOR ADMINISTRATION.

This chapter shall be administered for the City by the Director or his/her designee.

#### 5-10.105. CONSTRUCTION AND APPLICATION.

This chapter shall be construed to assure consistency with the requirements of the Federal Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and any existing or future municipal NPDES permits and any amendments, revisions or reissuance thereof.

#### 5-10.106. CONFLICTS WITH OTHER LAWS.

In the event of any conflict between this chapter and any Federal or State law, regulation, or permit, that requirement which establishes the stricter standard shall govern. To the extent permitted by law, nothing in this chapter shall preclude enforcement of any other applicable law, regulation, order, or permit.

#### 5-10.107. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this chapter. The City Council hereby declares that it would have passed this chapter and each section or subsection, sentence, clause or phrase thereof, irrespective of the fact any one or more sections, subsections, clauses or phrases be declared invalid.

#### 5-10.108. ABATEMENT OF HAZARDOUS MATERIALS.

Nothing in this chapter is intended to diminish or to preempt the authority of the Fire Department to investigate, cleanup or to abate the effects of any hazardous materials under State law or applicable sections of this Code, and any such actions of the Fire Department shall be in addition to and not in place of measures set forth in this chapter.

#### 5-10.109. ULTIMATE RESPONSIBILITY OF DISCHARGER.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore, this chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into the water of the United States caused by said person. This chapter shall not create liability on the part of the City or any agents or employee thereof, for any damages, claims, or liabilities that result from any discharger's reliance on this chapter or any administrative decision, lawfully made hereunder.

### ARTICLE 2. DISCHARGE REGULATIONS AND REQUIREMENTS

#### 5-10.201. PROHIBITED ACTIVITIES.

- (a) **Illicit Discharge.** Any illicit discharge to the City's MS4 is prohibited unless excepted by Section 5-10.202 of this Code. All discharges to the City's MS4 of material other than storm water must be in compliance with an NPDES permit issued for the discharge or other regulatory requirement issued pursuant to the Porter-Cologne Water Quality Control Act if an NPDES permit is not required or applicable.
- (b) **Discharge in Violation of Permit.** Any discharge that would result in or contribute to a violation of the City's existing or future municipal NPDES permit and any amendment, revision or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the

discharge, as well as the parcel owner on whose property the discharge occurs, who shall be strictly liable for its consequences, and such persons and/or owners shall defend, indemnify and hold harmless the City in any administrative or judicial enforcement action relating to such discharge.

- (c) **Illicit Connections.** It is a violation of this chapter and is prohibited to construct, establish, use, maintain, operate, or continue an illicit connection to the City's MS4 or cause, permit or suffer any agent, employee, or independent contractor to do so. This prohibition against illicit connections is retroactive and applies to unpermitted connections made in the past, regardless of whether permissible under the law or practices applicable or prevailing at the time of the connection.
- (d) **Roof Run-off.** Domestic roof drain leaders may not drain directly to sidewalks and gutters. Any practical method must be administered to discharge roof run-off into permeable areas.
- (e) **Private Drains.** Storm water or surface water which is causing flooding on private property served by an on-site storm drainage system may not be discharged to the City's MS4.
- (f) **Swimming Pool Water.** Discharge of water from a swimming pool, hot tub or spa into the City's MS4 is prohibited.

#### 5-10.202. EXCEPTIONS TO DISCHARGE PROHIBITION.

The following discharges are exempt from the prohibition set forth in Section 5-10.201 above:

- (a) Any discharge or connection regulated under a NPDES permit issued to the discharger provided that the discharger is in compliance with all requirements of the permit and all other applicable laws and regulations.
- (b) Discharges from the following non-stormwater activities unless identified by either the City or the Regional Water Board as a significant source of pollutants to waters of the United States:
  - (1) Water line and hydrant flushing,
  - (2) Landscape irrigation and lawn watering,
  - (3) Irrigation water,
  - (4) Rising ground waters or springs,

- (5) Foundation and footing drains,
  - (6) Water from crawl space pumps and basement pumps,
  - (7) Air conditioning condensate,
  - (8) Non-commercial vehicle washing,
  - (9) Flows from riparian habitats and wetlands,
  - (10) Diverted stream flows,
  - (11) Uncontaminated pumped ground water, and
  - (12) Uncontaminated ground infiltration.
- (c) When a discharge category above is identified as a significant source of pollutants to waters of the U.S., the discharge is prohibited unless the discharger implements BMPs which will reduce pollutants to the maximum extent practicable and the City receives approval from the Executive Officer of the Regional Water Quality Control Board pursuant to the City's municipal NPDES permit for stormwater.
- (d) Discharge of water from pumping out a swimming pool, hot tub or spa may be discharged to the sanitary sewer system.
- (e) Emergency fire flows (i.e., flows necessary for the protection of life or property). However, BMPs must be implemented to reduce pollutants from non-emergency fire fighting flows (i.e., flows from controlled or practice blazes) identified by the City to be significant sources of pollutants to waters of the United States.
- (f) Any discharge which an authorized enforcement officer, the local health officer, or the Regional Water Quality Control Board determines in writing is necessary for the protection of the public health and safety, and the environment.
- (g) Any discharge caused by flooding or other natural disaster which could not have been reasonably foreseen or mitigated for in advance by the discharger, as determined by the authorized enforcement officer.
- (h) Any discharge for which all pollutants have been reduced to the maximum extent practicable.

5-10.203. INDUSTRIAL AND COMMERCIAL BUSINESSES.

- (a) Compliance with NPDES Permits and Notification of Intent. Any industrial discharge activity, or industrial discharger described in a current NPDES general industrial permit shall comply with all requirements of such permit and the industrial discharger shall supply notice of intent to both the permitting agency and the City.
- (b) Commercial Businesses. Commercial businesses that are potentially significant sources of stormwater pollution but are not subject to a current NPDES general industrial permit shall control stormwater discharges to the maximum extent practicable, implement BMPs that effectively prohibit unauthorized non-stormwater discharges to the City's MS4 and comply with the provisions of this chapter as applied. The Director may require a commercial facility to develop a local SWPPP. Commercial entities that are potentially significant sources of stormwater pollutants include, but are not limited to, auto body shops, auto dealers, auto repair shops, dry cleaners, equipment rentals, nurseries, pet kennels, restaurants and caterers and retail gasoline outlets.
- (c) Storm Water Pollution Prevention Plan. All facility operators must prepare, retain on site, and implement a storm water pollution prevention plan as required by current NPDES industrial general permit and shall supply the City with a copy of the SWPPP upon request.
- (d) BMP Implementation. Any person engaged in industrial or commercial activities, as, for example ownership/use of facilities tending to produce pollutants such as gasoline stations, parking lots, and industrial or commercial enterprises shall implement control measures to effectively eliminate illegal non-stormwater discharges and prevent or reduce all pollutants entering City's MS4 to the maximum extent practicable. This may be accomplished by using good housekeeping measures to prevent or reduce littering, sweeping the business property, manage materials to avoid outdoor storage of grease, oil and other hazardous materials, and through the training and education of managers, employees, independent contractors and others responsible for the activities of the industrial or commercial business. The City has developed stormwater BMP brochures for various industrial and commercial businesses and has approved for use the BMPs contained in the California Stormwater Quality Association's "Stormwater Best Management Practice Handbook for Industrial and Commercial".

- (e) Inspection. The Director may, whenever necessary, enter a site and make an inspection of an industrial or commercial facility pursuant to section 5-10.401 of this Code to enforce of the provisions of this chapter.

#### 5-10.204. CONSTRUCTION ACTIVITIES.

- (a) Compliance with NPDES Permits and Notification of Intent. Any discharge associated with any current construction activity, or discharger described in a current NPDES general construction permit shall comply with all requirements of such permit and the discharger shall supply notice of intent to both the permitting agency and the City.
- (b) Local Stormwater Pollution Prevention Plan. Before receiving a construction grading or erosion control permit from the City pursuant to Article 3 of this Code, the discharger shall prepare and submit a local SWPPP to the City. The local SWPPP shall be consistent with (no less stringent than) any current NPDES general construction permit applicable to the discharger.
  - (1) Prior to the issuance by the City of a discretionary land use approval or any permit authorizing grading or construction for development, or at the discretion of the Director, the property owner shall submit to and obtain the approval of the Director for a local SWPPP when the Director determines that development such as, but not limited to, specific plans, multiphased subdivisions, redevelopment plans and larger planned developments may result in the discharge of significant levels of any pollutant to the MS4.
  - (2) A local SWPPP shall not be required for construction of a (one) single family detached residence or for a room addition unless the Director determines that the construction may result in the discharge of significant levels of a pollutant into the MS4. This exemption, shall not apply to construction of more than one (1) home at a time by one (1) developer in a residential subdivision.
  - (3) Each local SWPPP shall name a responsible party for the project.
  - (4) The owners of a development project, their successors and assigns, and each named responsible party, shall implement and adhere to the terms, conditions and requirements of the approved local SWPPP. Each failure by the owner of the property, their successors or assigns, or a named responsible party, to implement and adhere to the terms, conditions and requirements shall constitute a violation of this Ordinance.

- (5) The costs and expenses of the City incurred in the review, approval, or revision of any local SWPPP, (or in the approval or revision of any such) shall be charged to the property owner or responsible party and shall be a civil debt owed to the City. The City may elect to require a deposit of estimated costs and expenses, and the actual costs and expenses shall be deducted from the deposit, and the balance, if any, refunded to the property owner or responsible party.
  - (6) Compliance with the conditions and requirements of a local SWPPP shall not exempt any person from the requirement to comply independently with each provision of this Ordinance.
  - (7) In any action at law under this Ordinance, City shall have the right to reasonable attorneys fees in addition to its other costs, provided that it is determined by the court to be the prevailing party.
  - (8) The Director may require that the local SWPPP be recorded with the County Recorder's office by the property owner. The signature of the owner of the property, any successive owner, or the named responsible party shall be sufficient for the recording of the plans or any revised plan and a signature on behalf of the City shall not be required for recordation.
  - (9) The Director may require that the terms, conditions and requirements of the approved local SWPPP be placed as a condition on a final or tentative map.
- (c) Compliance with Best Management Practices. Every person undertaking any activity or use of a premise which may cause or contribute to storm water pollution or contamination, illegal discharges, or non-storm water discharges shall comply with applicable Best Management Practices guidelines or pollution control. With respect to any new construction, no encroachment or other development related permit shall be issued by the City without the written approval of the Director with respect to the requirements of this section. The Director may adopt requirements identifying appropriate best management practices for any activity, operation or facility which cause or contribute to pollution or contamination of City's MS4. All construction contractors performing work in the City shall conform to the Erosion and Sediment Control Standard of this chapter, City Standard Specifications for Erosion and Sediment Control, and any other standard adopted by the City. The City has approved for use the BMPs contained in the California Stormwater

Quality Association's "Stormwater Best Management Practice Handbook for Construction."

- (d) Construction Requirements. In addition to any adopted BMPs or other requirements for construction projects adopted by the City, the following requirements shall apply to all projects undergoing construction in the City. The requirements set forth below shall apply at the time of demolition of an existing structure or commencement of construction and until the project receives final occupancy/clearance from the City.
  - (1) Sediment, construction waste and other pollutants from construction sites and parking areas, including runoff from equipment at construction sites, shall be retained on the site to the maximum extent practicable.
  - (2) Any sediment or other materials that are not retained on the site shall be removed the same day as the projects are completed. Where determined necessary by the Director, a temporary sediment barrier shall be installed.
  - (3) Excavated soil shall be located on the site in a manner that minimizes the amount of sediments running into the street or adjoining properties. Soil piles shall be covered until the soil is either used or removed.
  - (4) No washing of construction or other industrial vehicles shall be allowed on a construction site or property adjacent to a construction site.
  - (5) Drainage controls shall be utilized as needed, depending on the extent of the proposed grading and topography of the site, including, but not limited to, the following: detention ponds, sediment ponds, infiltration pits, dikes, filter berms, ditches, down drains, chutes, or flumes.
- (e) Inspection. The Director may, whenever necessary, enter a site and make an inspection of a construction site pursuant to section 5-10.401 of this Code to enforce of the provisions of this chapter.

#### 5-10.205. NEW DEVELOPMENT AND REDEVELOPMENT.

- (a) Priority Development Categories. New development and significant redevelopment projects that may require the implementation of BMPs, as determined by the City include, but are not limited to:

- (1) Home subdivisions of 10 housing units or more. This category includes single-family homes, multi-family homes, condominiums and apartments.
- (2) Commercial developments with greater than one-acre of impervious area. This category is defined as any development on private land that is not for heavy industrial or residential uses where the total impervious land area for development is greater than one acre. The category includes, but is not limited to: hospitals; laboratories and other medical facilities; educational institutions; recreational facilities; commercial nurseries; multi-apartment buildings; car wash facilities; mini-malls and other business complexes; shopping malls, hotels; office buildings; public warehouses; and other light industrial facilities.
- (3) Automotive repair shops. This category is defined as a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 7532-7534, or 7536-7539, where the total impervious area for development is greater than 5,000 square feet.
- (4) Restaurants. This category is defined as a facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared food and drinks for immediate consumption (SIC code 5812), where the total impervious area for development is greater than 5,000 square feet.
- (5) Parking lots that are 5,000 square feet or greater, or with 25 or more parking spaces and potentially exposed to urban runoff. Parking lot is defined as a land area or facility for the temporary parking or storage of motor vehicles used personally, for business, or for commerce.
- (6) Streets and roads. This category includes any paved surface in excess of one acre of impervious area used for the transportation of automobiles, trucks, motorcycles, and other vehicles.
- (7) Retail Gasoline Outlets. This category is defined as any facility engaged in selling gasoline with 5,000 square feet or more of impervious surface area.

- (b) Best Management Practices for New Development and Redevelopment Design. To reduce or eliminate the discharge and transport of pollutants, the City may require, in its discretion, new development or redevelopment projects to implement controls to reduce pollutants to the maximum extent practicable. The City shall use the Guidance Manual for New Development Stormwater Quality Control Measures and Standards Specifications to ensure that effective post construction controls are considered and incorporated during the development planning process. The City has approved for use the BMPs contained in the California Stormwater Quality Association's "Stormwater Best Management Practice Handbook for New Development and Redevelopment."
- (c) Improvement Plans. Where an improvement plan is being processed in conjunction with either an approved tentative, parcel, or final map; or a development plan is being processed in accordance with the provisions of Title 10 of this Code, such plan shall also be considered as a request to undertake those activities regulated by this chapter. Such plans shall be reviewed and approved, conditionally approved or denied in accordance with the standards and requirements set forth in this chapter and other applicable City specifications. For an approved tentative, parcel, or final map, or development plan; any submitted improvement plans shall include provisions to require compliance with the standards and requirements of this chapter and shall include provisions to ensure that selected post construction stormwater controls will remain effective upon project completion.

### ARTICLE 3. GRADING AND EROSION CONTROL

#### 5-10.301. PERMITS REQUIRED.

- (a) Except as provided by Section 5-10.302, it is unlawful for any person to (1) grade, fill, excavate, store or dispose of three hundred fifty (350) cubic yards or more of soil or earth material or (2) clear and grub more than one-half (.5) acre of land within the City without a grading and erosion control permit. A separate permit is required for work on each site unless sites are contiguous, have the same ownership, and are included in the approved plan. Any determination by the Director as to whether a permit is required may be appealed pursuant to the provisions of Section 5-10.710.
- (b) All construction or development activity including clearing, grading or excavation that requires a grading/erosion control permit shall be undertaken in accordance with all requirements of this chapter.

- (c) The remedies for any violation of this article are set forth in Articles 5 and 7 of this chapter.

5-10.302. PERMITS NOT REQUIRED.

- (a) A Grading and Erosion Control Permit shall not be required to (1) grade, fill, excavate, store or dispose of less than three hundred fifty (350) cubic yards of soil or earth material or (2) clear and grub less than one-half (.5) acre of land within the City or (3) for the grading, filling, excavating, storing, disposing, or clearing and grubbing for:
  - (i) Swimming pools, basements, or footings of structures if authorized by a valid building permit;
  - (ii) Underground utilities;
  - (iii) Mining or quarry operations, if a use permit has been granted by the City;
  - (iv) Refuse disposal sites permitted by the Federal, State, and local governmental agencies;
  - (v) The production of planted agricultural crops;
- (b) A Grading and Erosion Control Permit shall not be required for, and the provisions of this chapter shall not apply to, grading, filling, excavating, storing, disposing, or clearing and grubbing for situations where, in the determination of the Director, there is a clear and imminent danger to life or property, or threat of loss of services for which there is an overriding public concern. The Director may, at the time of granting such exemption, impose appropriate conditions. Such exemption must be requested from the Director and approved in writing prior to the commencement of any activity regulated by this chapter.
- (c) Notwithstanding the provisions of subsection (a) hereof exempting specified activities from the otherwise applicable permit requirements, the activities described in subsection (a) shall be subject to the standards and requirements of this chapter. Any building permit issued in connection with the activities described in subsection (a) or in connection with any building permit issued for a single family residence on an individual lot regardless of size may be conditioned on compliance with the standards and requirements of this chapter. Any inspections required pursuant to this chapter or any other chapter of Title 9 of this Code shall include a determination of compliance with the purpose of this chapter.

#### 5-10.303. APPLICATION CONTENTS.

The application for a Grading and Erosion Control Permit shall be filed in the office of the City Engineer, and on a form provided by the City and submitted with such information as is prescribed by the City Engineer, including the following:

- (a) The name, address and telephone number of the applicant and the applicant's engineer;
- (b) The address and parcel number of the location for which the permit is sought;
- (c) A copy of all entitlements granted for the property by the City, including conditions of approval and the environmental documentation;
- (d) A copy of the submitted NOI for the site and Waste Discharge Identification number, if applicable;
- (e) A local SWPPP conforming with the requirements of Section 5-10.204;
- (f) Plans conforming with the requirements of Section 5-10.304;
- (g) Specifications conforming with the requirements of Section 5-10.305 if the Director expressly requires this information;
- (h) Right of entry conforming with the requirements of Section 5-10.306;
- (i) Fees conforming with the requirements of Section 5-10.307;
- (j) The City Engineer may require other information as necessary to fulfill the intent of this chapter.

#### 5-10.304. GRADING PLANS.

Plans shall be prepared by a civil engineer in conformance with the City of Modesto's Erosion and Sediment Control Standard, and Specifications for Construction Activities and shall include, but are not limited to, the following:

- (a) A vicinity map indicating the site location and significant geographic features;

- (b) A site delineation map indicating boundary lines of the property and each lot or parcel into which the site is proposed to be divided;
- (c) The location of on-site and surrounding watercourses and wetlands, existing and proposed drainage systems, and drainage area boundaries and acreages. Additional hydrologic analysis shall be provided as required by the Director;
- (d) The location of existing and proposed roads and structures on the site, and on adjacent property;
- (e) Accurate contours at two (2) foot intervals for slopes up to ten (10) percent, and five (5) foot intervals for slopes over ten (10) percent showing topography of existing ground and location of existing vegetation, including all oak trees, all other trees over six (6) inches in diameter measured at four and one-half (4.5) feet above the ground, groves of trees, and natural features such as rock outcroppings. Spot elevations will be required where relatively flat conditions exist. The spot elevations or contour lines shall be extended off-site for a minimum distance of fifty (50) feet, or one hundred (100) feet in flat terrain;
- (f) Elevations, location, extent and slope of all proposed grading shown by contours, cross-sections or other means, and location of any disposal areas, fills or other special features to be included in the work;
- (g) A statement of the quantity of material to be excavated, the quantity of material to be filled, whether such excavation or fill is permanent or temporary, and the amount of such material to be imported to or exported from the site;
- (h) A delineation of the area to be cleared and grubbed;
- (i) A statement of the estimated starting date, grading completion date, and when site improvements will be completed;
- (j) The location, implementation schedule, and maintenance schedule of all erosion control measures and sediment control measures to be implemented or constructed prior to, during or after the proposed activity;
- (k) A description of measures designed to control dust and stabilize the construction site road and entrance;
- (l) A description of the location and methods of storage and disposal of construction materials;

- (m) Any additional plans or control measures required by the Director.

#### 5-10.305. SPECIFICATIONS.

When required by the City Engineer, the following information shall be prepared and signed by a civil engineer, and submitted with the application for a Grading and Erosion Control Permit:

- (a) Preparation of natural ground to occur prior to placement of fill, including provisions for removal of organic or deleterious materials;
- (b) Quality control of native or imported fill material;
- (c) Degree of compaction;
- (d) Gradient of cut and fill slopes;
- (e) Geotechnical engineering or engineering geology reports used in the development of the above information.

#### 5-10.306. RIGHT OF ENTRY.

Whenever any portion of the work requires entry onto adjacent property for any reason, the applicant shall obtain the written consent of the adjacent property owner or his or her authorized representative, and shall file a copy of said consent with the City Engineer before a permit for such work may be issued.

#### 5-10.307. PERMITTING FEES.

- (a) A fee shall be paid by the applicant to the City for plan checking and review, materials testing, site inspections, processing, permit issuance and other services performed by the Public Works Department, and Community and Economic Development Department in connection with the investigation of an application for, and administration of, a Grading and Erosion Control Permit. The fees for these services shall be set by resolution of the City Council in the amount of the actual costs incurred by the City based on the hourly rate of the personnel performing the services, including all overhead costs.
- (b) Any applicant desiring a Grading and Erosion Control Permit shall pay a minimum deposit in an amount to be set by resolution of the City Council. This deposit shall be deducted from the permitting fees authorized in this section.

- (c) The City Engineer shall not perform any services for an applicant if an amount owing is not paid within twenty-eight (28) days, until such time that all amounts owing and interest thereon is paid in full. The balance of fees owing shall be paid in full prior to permit issuance. In the event the actual costs do not exceed the minimum deposit amount, the City shall reimburse the applicant the difference between the deposit amount and the actual total charges.

#### 5-10.308. ENVIRONMENTAL REVIEW.

Grading and Erosion Control Permits, and amendments thereto, are subject to the requirements of the California Environmental Quality Act (CEQA). The applicant shall furnish a copy of the application to the City Engineer for preparation and processing of the appropriate environmental documents. The City Engineer is authorized to hold public hearings on Negative Declarations, Draft Environmental Impact Reports and Final Environmental Impact Reports prepared on applications for Grading and Erosion Control Permits, for the purposes of receiving comments from the public. The City Engineer shall not approve a Grading and Erosion Control Permit prior to considering the applicable environmental document and complying with the requirements of CEQA and City procedures for preparation and processing of environmental documents.

#### 5-10.309. APPLICATION REVIEW.

The City Engineer shall review and approve, conditionally approve or deny Grading and Erosion Control Permit applications and improvement plans in accordance with the provisions of this chapter. Grading and Erosion Control Permit applications and improvement plans shall not be issued or approved if the City Engineer finds in writing that:

- (a) The applicant has failed to provide sufficient or adequate plans, information or other data necessary to allow determinations respecting compliance with the provisions of this chapter or City specifications; or
- (b) The environmental review has not been completed, other provisions of this Code or of State law pertaining to environmental review have not been satisfied, or the activity will have significant adverse environmental impacts, which cannot be substantially mitigated. Where the activity will have significant impacts, the City Engineer may approve the permit in accordance with the provisions of this chapter and the California Environmental Quality Act of 1970; or

- (c) The proposed activity will violate provisions of this chapter, City specifications, or State or Federal laws, and such violation cannot be resolved by the imposition of conditions pursuant to Section 5-10.311; or
- (d) The proposed activity will adversely affect surrounding properties and public rights-of-way, the water quality of watercourses, or existing drainage.
- (e) Environmental mitigation proposed is inadequate.

#### 5-10.310. CONTENTS OF PERMITS.

The Grading and Erosion Control Permit shall include but not be limited to a complete description of the activity for which it is issued, the property for which it is issued, the date of issuance and the date of expiration, and a description of any and all conditions upon which the permit has been issued. The permit shall be kept at the site during the activity for which the permit was issued. A Grading and Erosion Control Permit authorizes the permittee to undertake only that activity described in the permit and only on the property for which the permit is issued.

#### 5-10.311. CONDITIONS.

The City Engineer may at the time of issuance of the Grading and Erosion Control Permit impose such conditions as are necessary to ensure compliance with this chapter, City specifications, or State or Federal laws. Such conditions shall be reasonably related to the public needs created by the proposed activity. Conditions to mitigate environmental impacts of the activity may also be imposed by the City Engineer.

#### 5-10.312. PROCEDURE FOR IMPOSITION.

Any condition imposed pursuant to the provisions of Sections 5-10.310 and 5.10.311 shall be stated in the permit and served upon the applicant or permittee.

#### 5-10.313. TERM.

A Grading and Erosion Control Permit shall be effective on the date of issuance, and shall remain in force for the period of time set forth in the permit, unless suspended or revoked by the City Engineer, or voluntarily relinquished by the permittee. Before the expiration of a permit, a permittee may apply for an extension of time in which to complete the activity. One (1) extension of not more than one (1) year may be granted by the City Engineer.

#### 5-10.314. TRANSFERABILITY.

A Grading and Erosion Control Permit shall not be transferable or assignable from one person to another, unless approved by the City Engineer and the person to whom the permit is to be transferred agrees to comply with the requirements of the original permit and to any conditions imposed therein.

#### 5-10.315. PROOF OF COMPLIANCE.

The City Engineer may require proof of compliance with the current NPDES general construction permit in a form acceptable to the City prior to issuance by the City of any permit authorizing grading or construction, upon inspection of the construction site; during any enforcement proceeding or action; or for any other reasonable cause.

#### 5-10.316. DENIAL OF PERMIT.

The City Engineer shall deny an application for a Grading and Erosion Control Permit if any of the findings in Section 5-10.309 are made. Notice shall be served on the applicant, in writing with the reasons stated therefore, pursuant to the provisions of Section 1-6.205 of this Code.

#### 5-10.317. AMENDMENT OF PERMIT.

Any proposed changes in the activity authorized by the permit shall be submitted to the City Engineer for review. The permittee shall not undertake or allow activity to occur which does not conform with the plans or conditions of the original permit, unless approved by the City Engineer. The City Engineer shall review any proposed changes in the same manner and pursuant to the same standards as the original application.

#### 5-10.318. REQUEST FOR INSPECTION.

Requests for inspection of any site subject to the provisions of this chapter shall be made to the City Engineer at the following phases of activity. Such a request shall be made at least two (2) full business days in advance of the desired day of inspection.

- (a) When the site has been cleared of vegetation and unapproved fill, and scarified, benched, or otherwise prepared and before any fill is placed; and the erosion control and sediment control measures to be implemented in this phase have been placed;
- (b) When approximate final elevations have been established; drainage terraces, swales and other drainage devices have been graded and are ready

for paving; berms have been installed at the top of slopes; and the erosion control and sediment control measures to be implemented in this phase have been placed;

- (c) When work has been completed; slope planting established and irrigation systems installed, if required; and the erosion control and sediment control measures to be implemented in this phase have been placed.

The City Engineer, upon inspection of the site, shall notify the person or permittee (1) that the phase of work inspected is approved, or (2) what deficiencies, corrections or other work needs to be completed before approval of that phase.

#### 5-10.319. REPORTS.

Notification to the City Engineer shall be required within twenty-four (24) hours following the failure of authorized measures to prevent erosion or sediment from leaving the construction site; the deposit of debris or material on adjoining property or public rights-of-ways, or; the interference with any existing watercourses or drainage facilities.

#### 5-10.320. CESSATION OF WORK.

If activity is ceased on site for any reason for a period in excess of fifteen (15) calendar days, and before the activity being conducted under the permit is completed, all necessary steps shall be taken to prevent damage through erosion or sedimentation to adjoining properties or to the public rights-of-way or to any natural or artificial drainage blend into the adjacent terrain. The City Engineer shall be notified as soon as possible, but no later than fifteen (15) calendar days, after the cessation of work.

#### 5-10.321. COMPLETION OF WORK; CERTIFICATE.

After completion of work in accordance with and conforming with an approved permit, and delivery to the City of record plans and a grading plan as finally implemented, and payment of all fees, the City Engineer shall issue a certificate of completion.

#### 5-10.322. GROUNDS FOR SUSPENSION OR REVOCATION.

A Grading and Erosion Control Permit may be suspended if:

- (a) The physical state of the property differs from the descriptions, plans or information furnished to the City Engineer in the permit application; or

- (b) The activity does not conform to the approved plans, grades, conditions or terms of the permit; or
- (c) The activity is in violation of this chapter, City specifications, or State or Federal laws; or
- (d) Any reports required to be submitted to the City Engineer have not been submitted; or
- (e) Any of the information contained in reports submitted to the City Engineer is in error; or
- (f) Any of the permit conditions are violated.

#### 5-10.323. METHOD OF SUSPENSION OR REVOCATION.

The City Engineer may suspend or revoke a Grading and Erosion Control Permit by issuing a notice of suspension or revocation, stating the reasons therefore, and serving same, upon the permittee. Upon suspension or revocation of a permit, in accordance with the provisions of this section, the permittee shall immediately cause all grading, filling, excavating, storing, disposing or clearing and grubbing to cease until written authorization is received from the City Engineer to proceed with the activity.

The permittee shall have twenty (20) calendar days after the date of service of the suspension or revocation in which to file an appeal in accordance with the provisions of Sections 1-6.501 et seq. If such an appeal is filed, the suspension or revocation shall remain in force and be effective until a final decision on the appeal is issued by the hearing officer.

If the City Engineer suspends a permit, such permit may either be reinstated or revoked by the City Engineer, depending upon whether the permittee corrects the grounds stated for the suspension in the notice issued by the City Engineer. If the permittee fails to remedy the grounds for suspension within a time period specified by the City Engineer, but in no event later than sixty (60) calendar days, the City Engineer shall revoke the permit.

#### 5-10.324. LAWS NOT ENFORCED.

There are many ordinances and other laws applicable to activities permitted under this chapter which are not sought to be enforced under this permitting process. Such laws include, but are not limited to, building, floodplain management, and land development measures. The issuance of a Grading and Erosion Control Permit shall not be deemed to constitute a representation that the activity so

permitted or the property upon which such activity is occurring complies with such other ordinances or other laws. Nor shall the existence of such an unrevoked permit be deemed to preclude any criminal or civil remedy for violation of such other ordinances or laws. The possession of a Grading and Erosion Control Permit shall not be deemed to relieve the holder of the requirement to apply for or obtain any other license or permit required by ordinance or statute.

#### ARTICLE 4. INSPECTION AND MONITORING

##### 5-10.401. INSPECTION AUTHORITY.

- (a) Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the Director has reasonable cause to believe that there exists in any building or upon any premises any condition which constitutes a violation of this chapter, the Director may in accordance with Section 1-6.104 of this Code, enter such building or premises to inspect the same or perform any duty imposed upon the Director by this chapter.

If an owner, tenant, occupant, agent or other responsible party refuses to grant the City permission to enter or inspect, the City may seek an administrative inspection warrant pursuant to the procedures provided for in the California Code of Civil Procedure.

Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including, but not limited to random sampling and/or sampling in areas with evidence of storm water contamination, illicit discharges, discharge of non-storm water to the storm drain system, or similar factors.

- (b) The Director and/or City Engineer may enter and inspect property for which a Grading and Erosion Control Permit has been applied to determine applicability or compliance with this chapter and City specifications. The Director and/or City Engineer may also inspect any and all property on which grading, filling, clearing and grubbing or excavating activities are occurring.
- (c) Compliance Assessments. The Director may inspect public or private property for the purpose of verifying compliance with this Ordinance, including but not limited to (1) identifying products produced, processes conducted, chemicals used and materials stored on or contained within the property; (2) identifying point(s) of discharge of all wastewater, process water systems and pollutants; (3) investigating the natural slope at the location, including drainage patterns and man-made conveyance systems

(including roads with drainage systems, catch basins, curbs, gutters, channels and storm drains); (4) establishing the location of all points of discharge from the property, whether by surface runoff or through a storm drain system; (5) locating any illicit connection or the source of any illicit discharge; (6) evaluating compliance with any Storm Water Pollution Prevention Plan; (7) evaluating compliance with any permit; and (8) to inspect and copy records relating to compliance with this Ordinance.

- (d) **Portable Equipment.** The Director may inspect any vehicle, truck, trailer, tank truck or other mobile equipment as is necessary to determine compliance with this Ordinance.
- (e) **Records Review.** The Director may inspect records of the owner, occupant or person in charge of day-to-day operations of private property as necessary to determine compliance with the provisions of this Ordinance.
- (f) **Sample and Test.** The Director may inspect, sample and test any area runoff, soils area (including groundwater testing), process discharge, materials within any waste storage area (including any container contents), and/or treatment system discharge for the purpose of determining the potential for contribution of pollutants to the MS4. The Director may investigate the integrity of all storm drain and sanitary sewer systems or other pipelines on the property using appropriate tests, including but not limited to smoke and dye tests or video surveys. The Director may take photographs or videotape, make measurements or drawings, and create any other record reasonably necessary to document conditions on the property.
- (g) **Monitoring.** The Director may undertake monitoring and analysis including both the construction and maintenance of devices, or require the owner or person in charge of day to day operations of the property to undertake construction and maintenance of devices, at the owners expense, for the purpose of measuring any discharge or potential source of discharge to the MS4.
- (h) **Test Results.** The owner or person in charge of day to day operations of the property subject to inspection shall provide copies of test results to the City and, on submission of a written request to the Director, be entitled to copy test results conducted by the Director.

#### 5-10.402. AUTHORITY TO SAMPLE AND ESTABLISH SAMPLING DEVICES.

With the consent of the owner, occupant, tenant/other person in control of a property, or pursuant to an administrative inspection warrant, the Director may establish on any property such devices as are necessary to conduct sampling or metering operations. During all inspections as provided herein, the Director may take any samples deemed necessary to aid in the pursuit of the inquiry or in the recording of the activities onsite.

#### 5-10.403. MONITORING, ANALYSIS AND REPORTING AUTHORITY.

The Director may request that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to storm water pollution or contamination, illicit discharges, and/or discharge of non-storm water to the storm water system, undertake such monitoring activities and/or analysis and furnish such reports as the officer may specify. The burden, including costs, of these activities, analysis and reports shall bear a reasonable relationship to the need for the monitoring, analysis, and reports and the benefits to be obtained. The recipient of such request shall undertake and provide the monitoring, analysis and/or reports requested. In the event the owner or operator of a facility subject to a monitoring and/or analysis order fails to conduct required monitoring and/or analysis and furnish the required reports in the form required, the Director may cause such monitoring and/or analysis to be performed and the cost, therefore, including the reasonable additional administrative costs incurred by the City shall be borne by the owner of the property and the cost thereof shall be invoiced to the owner of the property and shall become a civil debt of the owner to the City, enforceable by a lien on the property.

#### 5-10.404. NOTIFICATION OF SPILLS.

Any person owning, occupying or in charge of a premises or responsible for emergency response for a facility has a personal responsibility to train facility personnel and maintain notification procedures to assure immediate notification is provided to the City of any suspected, confirmed, or unconfirmed release of materials, pollutants or wastes creating a risk of discharge into the City's MS4. As soon as any person owning, occupying or in charge of the premises or responsible for emergency response for a facility has knowledge of any suspected, confirmed or unconfirmed release, such person shall take all necessary steps to ensure the discovery and containment and cleanup of such release and shall immediately notify the City of the occurrence by telephoning the illicit discharge hotline and confirming the notification by written correspondence to the Director within twenty-four (24) hours of any known or confirmed pollutant.

### ARTICLE 5. ENFORCEMENT AUTHORITY

#### 5-10.501. ENFORCEMENT POWERS.

- (a) With respect to any violation of this chapter, the Director may utilize any enforcement powers authorized or provided in this Code. These include, but are not limited to, administrative remedies as set forth in Title 1, Chapter 6 of this Code.
- (b) The Director may exercise any of the following supplemental enforcement powers deemed necessary or advisable:
  - (1) Notice to Clean and Abate: Whenever the Director finds any oil, earth dirt, cans, rubbish, refuse, waste or any other material of any kind, in or upon the sidewalk abutting or adjoining any parcel of land, or upon any parcel of land or grounds, which may result in an increase in pollutants entering the City's MS4 or natural water course, he or she may give notice to remove and abate such oil, earth, dirt, cans, rubbish, refuse, waste or other material, in any manner that he or she may reasonably provide to any owner, operator, responsible party, tenant, permittee or other person or entity controlling the property or premises. The recipient of such notice shall undertake the activities as described in the notice.

In the event the owner or operator of a facility fails to conduct the activities as described in the notice, the Director may cause such required activities as described in the notice and the cost thereof shall be treated as costs of abating a nuisance and invoiced to the owner of the property pursuant to either Title 1, Chapter 6, Article 7 of this Code or Section 5-10.604 of this chapter. If unpaid, such costs shall constitute a lien against the affected property.

- (2) Local Storm Water Pollution Prevention Plan: The Director shall have the authority to establish elements of a local SWPPP, and to require any business to adopt and implement such a plan, as may be reasonably necessary to fulfill the purposes of this chapter.
- (3) Best Management Practices: The Director may establish the requirements of Best Management Practices for any premises.
- (4) Compliance Schedule: Any activity not complying with the strictest of any applicable Federal or State standards or regulations covering the discharge of storm water or surface water, may require the Director to develop and implement a schedule for compliance for any measure or facilities as may be necessary to meet said standards and regulations. Failure to complete the compliance

schedule by any specified date shall constitute a violation of this chapter.

- (5) Cease and Desist Orders: When the Director finds that a discharge has taken place or is likely to take place in violation of this chapter, he/she may issue an order to the owner, tenant, occupant, or other persons in charge of day to day operations of any public or private property to cease and desist such discharge, or practice, or operation likely to cause such discharge and direct that those persons not complying shall:
  - (i) Immediately discontinue any illicit connection or illicit discharge to the MS4.
  - (ii) Immediately contain or divert any flow of water off the property, where the flow is occurring in violation of any provision of this Ordinance.
  - (iii) Immediately discontinue any other violation of this Ordinance.
  - (iv) Clean up the area affected by the violation.
  - (v) Comply with all the provisions of any Storm Water Pollution Prevention Plan, local SWPPP, Storm Water Quality Management Plan, permit, and/or this Ordinance, and/or with a timetable established by the Director for such compliance.
  - (vi) Take appropriate remedial or preventive action to prevent any violation from recurring.
- (6) Abatement: The Director may order the abatement of any discharge from any source to the City's MS4 when, in his/her opinion, the discharge causes or threatens to cause a condition which presents an imminent danger to the public health, safety, or welfare, or the environment, or a violation of a NPDES permit. In emergency situations where the property owner or other responsible party is unavailable and time constraints are such that service of a notice and order to abate cannot be effected without presenting an immediate danger to the public health, safety, or welfare, or the environment, or a violation of a NPDES permit, the City may perform or cause to be performed such work as shall be necessary to abate said threat or danger. The costs of any such

abatement shall be borne by the owner and shall be collectable as specified in either Section 5-10.604, or Title 1, Chapter 6, Article 7 of this Code.

- (7) Criminal Citation: The Director shall have and is hereby vested with the authority to arrest or cite any person who violates any section of this Code in the manner provided by the California Penal Code for the arrest or release on citation of misdemeanor infractions as prescribed by Chapter 5, 5c, and 5d of Title 3, Part 2 of the Penal Code (or as the same may be hereafter amended).

The Director may issue a citation and notice to appear in the manner prescribed by Chapter 5 of Title 3, Part 2 of the Penal Code, including Section 853.6 (or as the same may hereafter be amended). It is the intent of the City Council that the immunities prescribed in Section 836.5 of the Penal Code be applicable to public officers or employees acting the course and scope of employment pursuant to this chapter.

- (c) The Director may also exercise the following supplemental enforcement powers deemed necessary or advisable for illicit discharges and illicit connections in violation of 5-10.201 of this Code.
  - (1) Verbal Warning: The Director may issue a verbal warning for conditions that result in ordinance violations due to poor housekeeping or management practices.
  - (2) Notice of Violation: The Director may issue a notice of violation for first-time spills of small quantities (<1 gallon for most products), failure to implement appropriate BMPs after receiving a verbal warning, and other minor infractions with minimal impact on the MS4 and the environment.
  - (3) Cease and Desist Order: The Director may issue a cease and desist order for failure to terminate illicit connection or otherwise fail to respond appropriately to an administrative compliance order, major or ongoing violations of the ordinance (e.g. large spills, gross negligence), and a significant impact to the environment caused by the violation.
  - (4) Referral: The Director may report the violations to the Stanislaus County Department of Environmental Resources, Central Valley Regional Water Quality Control Board, California Department of Fish and Game, and the City Attorney for action as appropriate. Such actions may be taken for failure to respond appropriately to a

cease and desist order or if evidence indicates that the violator acted willfully with intent to cause, allow to continue, or conceal discharge in violation of the ordinance.

- (d) The Director may also exercise the following supplemental enforcement powers deemed necessary or advisable for industrial and commercial business activities in violation of 5-10.203 of this Code.
- (1) Verbal Warning. The Director may issue a verbal warning for conditions that result in ordinance violations due to poor housekeeping or management practices. Verbal warnings are usually issued to facilities that are cooperative and willing to remedy the situation.
  - (2) Notice of Non-compliance (Notice of Violation and Notice to Clean). The Director may issue a notice of non-compliance for first-time isolated spills of small quantities (e.g. <1 gallon for most products), failure to implement appropriate BMPs after receiving a verbal warning, and other minor infractions with minimal impact on the City's MS4 and the environment. Notices of non-compliance are usually issued to facilities that are cooperative and willing to remedy the situation.
  - (3) Administrative Compliance Order (Correction Order). The Director may issue an administrative compliance order for violations that are the same or similar to those identified in section (2) above except the administrative compliance order is usually issued to facilities that are not cooperative or it is a second offense of a similar nature.
  - (4) Cease and Desist Order. The Director may issue a cease and desist order for failure to respond appropriately to a notice of non-compliance or administrative compliance order, facility is not cooperative, major or ongoing violations occur (e.g. large spills, gross negligence in housekeeping or management practices), or significant impacts to the environment are caused by the violation.
  - (5) Referral to Other Enforcement Authorities. The Director may refer or report violations for the failure to respond appropriately to previous warnings or orders or if evidence indicates that the violator acted willfully with intent to cause, allow to continue, or conceal discharge in violation of ordinance to the Stanislaus County Department of Environmental Resources, Central Valley Regional Water Quality Control Board, County Agricultural

Commissioners Office, California Department of Fish and Game, County District Attorney and/or City Attorney for action, as appropriate.

- (e) The Director may also exercise the following supplemental enforcement powers deemed necessary or advisable for construction activities in violation of 5-10.204 of this Code.
  - (1) Verbal Warning. The Director may issue a verbal warning for conditions that result in ordinance violations due to poor housekeeping or management practices. Verbal warnings are usually issued to facilities that are cooperative and willing to remedy the situation.
  - (2) Notice of Violation. The Director may issue a notice of violation for conditions that result in ordinance violations due to a first-time, isolated incident, failure to implement appropriate BMPs after receiving a verbal warning, and minor infractions with minimal impact on the storm drain system and the environment. Notices of violation are usually issued to facilities that are cooperative and willing to remedy the situation.
  - (3) Administrative Compliance Order. The Director may issue an administrative compliance order for failure to respond appropriately to written notice, second offense of similar nature, minor infractions with minimal impact on the storm drain system and for a facility that is not cooperative.
  - (4) Stop Work Order. The Director may issue a stop work order for failure to respond appropriately to Administrative Compliance Order, major violations of the ordinance (e.g. large spills, gross negligence in housekeeping or management practices) possibly requiring emergency spill response, third violation in a 12 month period, ongoing discharges of pollutants to the storm drain system or to the environment, significant impact to the environment caused by the violation, or facility is not cooperative.
  - (5) Permit Revocation and Referral. The Director may revoke local permits if terms are violated due to a failure to respond appropriately to a Stop Work Order or evidence indicates that violator acted willfully with intent to cause, allow to continue, or conceal discharge in violation of ordinance. The Director may report the violations to the Central Valley Regional Water Quality

Control Board, California Department of Fish and Game, County District Attorney and the City Attorney for action, as appropriate.

5-10.502. APPEAL.

Any person served with an administrative citation, administrative notice and order, notice to clean and abate, cease and desist order, compliance schedule or is aggrieved by a decision of the Director may appeal pursuant to the provisions set forth in Title 1, Chapter 6, Article 5 of this Code.

ARTICLE 6. FUNDING

5-10.601. STORM DRAINAGE USER CHARGE.

Each person owning property within the City limits shall pay a storm drainage user charge to the City in accordance with rates and charges as established by the Council from time to time in accordance with law. Property owners shall remain responsible for the cost of storm management and quality control on their property. The Council shall have the power to establish, by agreement or resolution, the rate or rates to be charged and the method of collecting the storm drainage user charge for properties outside the boundaries of the City limits for those properties which discharge into the City's MS4.

5-10.602. INDUSTRIAL AND COMMERCIAL ACTIVITIES FEES.

- (a) Council shall, from time to time, establish by resolution a schedule of industrial and commercial activities fees. These fees shall apply to parcels which are required by Federal law to obtain a National Pollutant Discharge Elimination System (NPDES) permit regulating the discharge of storm water and surface water from the site of an industrial activity. The fees shall correspond to the costs expended by the City in monitoring the discharge from such a site of industrial activity for compliance with the conditions of its NPDES permit, as well as any costs associated with damage to or degradation of City's MS4.
- (b) Council shall, from time to time, establish by resolution a schedule of industrial and commercial activities fees. These fees shall apply to all other industrial and commercial parcels within the City of Modesto. The fees shall correspond to the costs expended by the City in monitoring the discharge from such a site of industrial activity for compliance with the conditions of its NPDES permit, as well as any costs associated with damage to or degradation of City's MS4.

5-10.603. CONSTRUCTION ACTIVITIES FEES.

- (a) Council shall, from time to time, establish by resolution a schedule of construction activities fees. These fees shall apply to parcels which are required by Federal law to obtain a National Pollutant Discharge Elimination System (NPDES) permit regulating the discharge of storm water and surface water from the site of construction activity. The fees shall correspond to the costs expended by the City in monitoring the discharge from such a site of construction activity for compliance with the conditions of its NPDES permit, as well as any costs associated with damage to or degradation of City's MS4.
- (b) Council shall, from time to time, establish by resolution a schedule of construction activities fees. These fees shall apply to parcels which are required to have a permit as issued by the City for construction activity. The fees shall correspond to the costs expended by the City in monitoring the discharge from such a site of construction activity for compliance with the conditions of its NPDES permit, as well as any costs associated with damage to or degradation of City's MS4.

5-10.604. NEW DEVELOPMENT AND REDEVELOPMENT ACTIVITY FEES.

Council shall, from time to time, establish by resolution a schedule of new development and redevelopment activity fees. These fees shall apply to parcels which are new development or redevelopment projects within the City. The fees shall correspond to the costs expended by the City and plan review monitoring the discharge and inspection from such sites for compliance with the conditions of its NPDES permit, as well as any costs associated with damage to or degradation of City's MS4.

5-10.605. COLLECTION, INTEREST AND PENALTIES.

- (a) The City's Finance Director is authorized to have the charges imposed by this article collected by the county in conjunction with the county's collection of property tax revenues for the City. In the event that the county collects the charges imposed by this article, the imposition of penalties, additional fees and interest upon owners who fail to remit any charge imposed by this chapter, or who fail to remit any delinquent remittance under this chapter, shall be subject to and governed by the rules, regulations and procedures utilized by the county in its collection of property taxes and charges for the City, and in its collection of this additional charge for the City.

- (b) Every penalty imposed and such interest as accrues under the provisions of this article shall become a part of the charges herein required to be paid.
- (c) Every assessment, cost, fee, charge, penalty, or other monies collected under this chapter shall be paid to the City to be used exclusively for costs associated with monitoring and establishing storm water discharge pollution control systems and/or implementing or enforcing the provisions of this chapter.

#### 5-10.606. DELINQUENT CHARGES REMEDIES.

- (a) Lien. Any and all monetary penalties, charges, fees, or other costs incurred for violation of this chapter may be billed to the owner of the property. If the invoice remains unpaid for sixty (60) days, a lien shall be placed upon and against such premises, and any steps authorized by law may be taken by the City to enforce payment of such lien.
- (b) The amount of any charge, penalty, and interest imposed under the provisions of this article shall be deemed a debt to the City.
- (c) The remedies established in this article are cumulative and in addition to any other remedies available under this chapter for collection of the charges, penalties and fees imposed herein.

#### 5-10.607. COSTS OF ENFORCEMENT.

If the City prevails in any administrative, civil, or criminal proceeding initiated under this chapter, the City shall be entitled to seek reimbursement for all costs incurred in connection with said proceeding. In any such action, the City shall be entitled to reasonable reimbursement to include its costs of investigation, administrative overhead, out-of-pocket expense, cost of administrative hearings, attorney's fees, and costs of lawsuit.

### ARTICLE 7. REMEDIES

#### 5-10.701. CIVIL REMEDIES

In addition to any other remedies provided in this chapter, any violation of the provisions of this chapter may be enforced by civil action brought by the City. In any such action, the City may seek any or all of the following remedies:

- (a) Injunctive relief;

- (b) Assessment against the violator for the costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs and attorneys fees incurred in preparing and prosecuting the civil action as a result of violations of this chapter;
- (c) Recovery for costs incurred in removing, correcting, terminating, or preventing adverse effects resulting or likely to result from the violation;
- (d) Compensatory damages for loss or destruction to water quality, wildlife, fish, and aquatic life; and/or
- (e) Such other relief as the court may authorize.

Judgments and/or court ordered payments assessed under this subsection shall be paid to the City to be used exclusively for costs associated with monitoring and establishing storm water discharge pollution control systems and/or implementing or enforcing the provisions of this chapter.

#### 5-10.702. CIVIL PENALTIES.

Any person who violates any provision of this chapter, who discharges or causes pollution, or who violates any cease and desist order, state or national law or regulation, or any other order of the Director shall be civilly liable to the City in a sum not to exceed twenty-five thousand dollars (\$25,000) per violation per day. In addition, the City may require the user to pay any excess costs to the system for supplementary treatment systems, facilities, or operations needed as a result of allowing the entry of such discharges into the storm water system.

The City may petition the Stanislaus County Superior Court to impose, assess, and collect any sums levied pursuant to this chapter and Sections 54725, 54739, and 54740, et seq. of the California Government Code. In determining the amount to be recovered, the court shall take into consideration all relevant circumstances, including, but not limited to, the extent of the harm caused by the violation, the economic benefit derived through any noncompliance, the nature and persistence of the violation, the length of time over which the violation occurs, and corrective action, if any, attempted or taken by the discharger.

Notwithstanding any other provision of law, all civil penalties imposed by the court pursuant to this paragraph shall be distributed to the City. Remedies imposed pursuant to this section are in addition to and do not supersede or limit any and all other administrative, civil, or criminal remedies available at law.

#### 5-10.703. CRIMINAL VIOLATIONS.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. A violation of any of the provisions or failing to comply with any of the requirements of this chapter shall constitute a misdemeanor; except that notwithstanding any other provision of this Code, any such violation may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. Any person convicted of a misdemeanor under the provisions of this chapter shall be punishable by a fine of not more than one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period of not more than six (6) months, or by both fine and imprisonment. Any person convicted of an infraction under the provisions of this Code shall be made punishable by a fine only as follows:

- (a) Upon a first conviction, by a fine of not exceeding two hundred and fifty dollars (\$250.00).
- (b) For a second conviction or any subsequent conviction within a period of one (1) year, by a fine not exceeding five hundred dollars (\$500.00).

#### 5-10.704. CONCEALMENT AND ABETTING.

Causing, permitting, aiding, abetting or concealing a violation of any provision of this chapter is unlawful and shall constitute a misdemeanor.

#### 5-10.705. ADMINISTRATIVE REMEDIES.

Title 1, Chapter 6, of this Code established the Administrative Remedies for violation of this Code and applicable State codes. The general remedies include administrative abatement, summary abatement, civil penalties, administrative citation, administrative compliance order(s), recordation of notices of violation, notices and orders, and mediation. The City may pursue any of these administrative remedies for violations of this chapter.

#### 5-10.706. VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the penalties provided herein, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to the public health, safety and welfare, is declared and deemed a nuisance.

#### 5-10.707. REMEDIES NOT EXCLUSIVE.

Remedies under this chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided herein shall be cumulative and not exclusive.

5-10.708. CONTINUING VIOLATION.

Every day any violation of this chapter continues, it shall constitute a separate offense.

5-10.709. LIABILITY.

In the event that any person does not comply with the provisions of this chapter, any provision of any permit issued pursuant to this chapter, or who discharges waste or wastewater which causes pollution, or who violates any cease and desist order, prohibition or effluent limitation contrary to state or federal law, and pollutant(s) are discharged to the City's MS4, that cause or threaten to cause an adverse impact on water quality, or a receiving stream or the groundwater, that person shall be liable for any or all of the following:

- (a) Any and all monetary penalties, charges, fees, cleanup costs, and other costs that may be imposed on the City by State or Federal regulatory agencies as a result of threatened or actual violation(s), including administrative and legal fees;
- (b) Any and all judgments and associated costs that may be awarded to individuals or entities as a result of threatened or actual violation(s);
- (c) The total costs of containment, cleanup, treatment or disposal that the Director may deem necessary to abate threatened or actual adverse impact on water quality of a receiving stream or the ground water, including consulting and administrative fees.
- (d) Interest on the foregoing from the date of expenditure until the date paid.

5-10.710. JUDICIAL REVIEW.

The provisions of Sections 1094.5 and 1094.6 of the California Code of Civil Procedure set forth the sole procedure for judicial review of any action taken pursuant to this chapter. Parties seeking judicial review of any final action taken pursuant to this chapter shall file such action within ninety (90) calendar days after the occurrence of any event or receipt of any decision constituting the evaluation of administrative remedies provided in this chapter for which review is sought.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 4<sup>th</sup> day of August, 2004, by Councilmember Hawn, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Keating

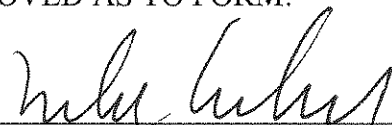
APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3355-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of September, 2004, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_

  
MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR, City Clerk

Effective Date: October 8, 2004

ORDINANCE NO. 3356-C.S.

AN ORDINANCE AMENDING SECTION 2-3-8 OF THE ZONING MAP TO REZONE FROM PREZONE SPECIFIC PLAN OVERLAY ZONE, P-SP-O, TO PREZONE PLANNED DEVELOPMENT ZONE, P-P-D(567), AND FROM SPECIFIC PLAN OVERLAY ZONE, SP-O, TO PLANNED DEVELOPMENT ZONE, P-D(567), PROPERTY LOCATED ON THE WEST SIDE OF DALE ROAD NORTH OF BANGS AVENUE (KAISER FOUNDATION HOSPITALS)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 2-3-8 of the Zoning Map is hereby amended to reclassify the following described property from Prezone Specific Plan Overlay Zone, P-SP-O, to Prezone Planned Development Zone, P-P-D(567), and from Specific Plan Overlay Zone to Planned Development Zone, P-D(567):

P-SP-O to P-P-D(567)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the Northeast Quarter of Section 2, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at the southeast corner of said northeast quarter of section 2; thence South 89°38'01" West along the south line of said northeast quarter of section 2, a distance of 25 feet to the west line of Dale Road and the True Point of Beginning; thence continuing South 89°38'01" West along said south line of said section 2 a distance of 1283.02 feet to the west line of Lot 30 as shown on the Map of Eden Colony filed in Volume 4 of Maps, Page 32, Stanislaus County Records; thence North 00°09'38" West along said west line, a distance of 1323.13 feet to the northwest corner of said Lot 30; thence continuing North 00°09'38" West along the west line of Lot 17 of said Eden Colony, a distance of 365.63 feet to the westerly prolongation of the north line of Parcel 2 as described in the deed to Ronald J. Malik recorded July 30, 1991, as Instrument Number 57416, Stanislaus County Records; thence North 89°38'01" East along said westerly prolongation a distance of 272.70 feet to the northwest corner of said Parcel 2; thence continuing North 89°38'01" East along the north line of said Parcel 2, a distance of 328.22 feet to the east line of said Lot 17; thence South 00°11'22" East along said east line, a distance of 4.11 feet to

the northwest corner of Parcel 3 as described in the deed to Ronald J. Malik and Edna Malik recorded April 29, 2003, as instrument Number 66261, Stanislaus County Records; thence North 89°32'03 East along said north line of Parcel 3, a distance of 682.69 feet to the west line of Dale Road, thence South 00°08'27" East along said west line, a distance of 1685.88 feet to the True Point of Beginning;

Also including all of MID Lateral No. 6, being immediately adjacent to the above described property.

SP-O to P-D(567)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the Northeast Quarter of Section 2, Township 3 South, Range 8 East, Mount Diablo Base and Meridian, more particularly described as follows:

Beginning at the southeast corner of said northeast quarter of section 2; thence South to the point of intersection of the east line of said section 2 and the easterly prolongation of the south line of MID Lateral Number 6; thence West along said prolongation of the south line of MID Lateral Number 6 to the west line of Dale Road; thence North along the west line of Dale Road to the northeast corner of Parcel 3 as described on the deed to Ronald J. Malik and Edna Malik recorded April 29, 2003, as Instrument Number 66261, Stanislaus County Records; thence East along the prolongation of said Lot 3 to the east line of said section 2; thence South along the east line of Section 2 to the point of beginning.

SECTION 2. USES. The following uses shall be permitted in said P-D(567) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

Hospital, hospital support services, medical services buildings,  
administrative office buildings, central utility plant, parking facilities,

cafeteria, optical and pharmacy services. Restaurants and gift shops are also permitted if located within the existing buildings as shown on the approved site plan.

SECTION 3. ZONING MAP. Section Map 2-3-8 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

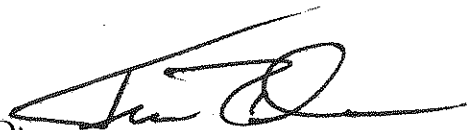
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of August, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich  
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By Greg Dunbar  
Community & Economic Development  
Department - Planning Division

Ord. No. 3356-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of September, 2004, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR, City Clerk

Effective Date: October 8, 2004

ORDINANCE NO. 3357-C.S.

AN ORDINANCE APPROVING THE DEVELOPMENT  
AGREEMENT BETWEEN THE CITY OF MODESTO AND  
KAISER FOUNDATION HOSPITALS FOR THE  
DEVELOPMENT OF KAISER MODESTO MEDICAL  
CENTER/CORNERSTONE BUSINESS PARK LOCATED IN  
THE KIERNAN BUSINESS PARK SPECIFIC PLAN

WHEREAS, Government Code Section 65864, et seq., authorizes the City to enter into binding development agreements with any person or persons having a legal or equitable interest in real property for the development of such property and authorizes the City to establish procedures for the application and consideration of such agreements, and

WHEREAS, by City Council Resolution No. 97-492, adopted on August 26, 1997, the City Council has established procedures and requirements for the consideration of development agreements, and

WHEREAS, Kaiser Foundation Hospitals has applied for a Development Agreement for the Kaiser Modesto Medical Center/Cornerstone Business Park Project located in the Kiernan Business Park Specific Plan, which includes provisions regarding the development of the site, processing of future entitlements, payment of fees and taxes, installation of public infrastructure, and implementation of environmental mitigation measures, and

WHEREAS, a duly noticed public hearing was held by the Planning Commission of the City of Modesto on July 19, 2004, in the Tenth Street Place Chambers, located at 1010 10th Street, Modesto, California, for the purpose of making a recommendation to the City Council concerning the proposed Development Agreement, at which hearing evidence both oral and documentary was received and considered, and

WHEREAS, after said public hearing, the Modesto City Planning Commission, by Resolution No. 2004-39, adopted on July 19, 2004, recommended to the City Council approval of the proposed Development Agreement between the City of Modesto and Kaiser Foundation Hospitals, and

WHEREAS, said matter was set for a public hearing of the City Council to be held at 5:30 p.m., on August 10, 2004, in the Tenth Street Place Chambers, located at 1010 10th Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held for the purpose of considering the proposed Development Agreement between the City of Modesto and Kaiser Foundation Hospitals for the Kaiser Modesto Medical Center/Cornerstone Business Park Project located in the Kiernan Business Park Specific Plan, and

WHEREAS, the City Council has received and considered the Final Environmental Impact Report for the Kaiser Modesto Medical Center/Cornerstone Business Park Project (SCH No. 2003072085) which analyzed the potential environmental effects of the proposed Development Agreement and has, by separate resolution, certified said Final Environmental Impact Report, and

WHEREAS, Section 65867.5 of the Government Code provides that a development agreement is a legislative act which shall be approved by ordinance and is subject to referendum, and

WHEREAS, said Government Code section further provides that a development agreement or any amendment thereto, shall not be approved unless the legislative body finds that

the provisions of the agreement are consistent with the general plan and any applicable specific plan,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto does ordain as follows:

SECTION 1. FINDINGS. The Council of the City of Modesto hereby finds and determines as follows:

1. The proposed Development Agreement is consistent with the General Plan and the Kiernan Business Park Specific Plan of the City of Modesto because the resulting development would be consistent with the Kiernan Business Park Specific Plan and the Development Agreement would ensure that adequate infrastructure is constructed concurrent with development, as required by the General Plan.
2. The proposed Development Agreement is consistent with the specific content and other requirements of City Council Resolution No. 91-185, which establishes procedures and requirements for the consideration of development agreements; the City's subdivision and zoning provisions of the Modesto Municipal Code; and Government Code Section 65854 et seq.
3. The proposed Development Agreement is within the scope of the Kaiser Modesto Medical Center/Cornerstone Business Park Final EIR (SCH No. 200307085) and has been adequately analyzed by the EIR.

SECTION 2. APPROVAL OF DEVELOPMENT AGREEMENT. The Development Agreement between the City of Modesto and Kaiser Foundation Hospitals for the Kaiser Modesto Medical Center/Cornerstone Business Park located in the Kiernan Business Park Specific Plan, is hereby approved, a copy of which is on file in the Office of the City Clerk.

SECTION 3. EXECUTION BY CITY. The City of Modesto, a municipal corporation, has authorized execution of the Development Agreement by its City Manager and attestation by its City Clerk on behalf of the City of Modesto.

SECTION 4. RECORDING OF AGREEMENT. Pursuant to Government Code Section 65868.5, no later than ten (10) days after the City approves said Development Agreement, the City Clerk is hereby directed to record with the County Recorder a copy of the Development Agreement which shall describe the land subject thereto.

SECTION 5. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 6. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 10th day of August, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich  
MICHAEL D. MILICH, City Attorney

Ord. No. 3357-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of September, 2004, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR City Clerk

Effective Date: October 8, 2004

ORDINANCE NO. 3358-C.S.

AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. 2982-C.S. ENTITLED "AN ORDINANCE AMENDING SECTIONS 12-3-8 AND 13-3-8 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE , R-1, TO PLANNED DEVELOPMENT ZONE, P-D(346), AS AN ADDITION TO PLANNED DEVELOPMENT ZONE, P-D(346), PROPERTY LOCATED ON THE SOUTH SIDE OF WEST RUMBLE ROAD EAST OF HAHN DRIVE. (TERRY MUNDY)" (TERRY L. MUNDY).

SECTION 1. AMENDMENT OF ORDINANCE NO. 2982-C.S. Section 2 of Ordinance No. 2982-C.S. is hereby amended to read as follows:

"SECTION 2. USES. The following uses shall be permitted in said P-D(346) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Convalescent hospital complex.
2. Off-street parking areas.
3. Business/professional offices for uses as allowed in the P-O Zone.
4. Indoor Storage."

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the

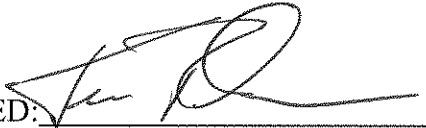
City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26<sup>th</sup> day of October, 2004, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:


AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

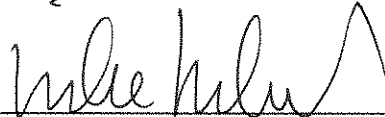
APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By:   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By:   
MICHAEL D. MILICH, City Attorney

Ord. No. 3358-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3<sup>rd</sup> day of November, 2004, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant

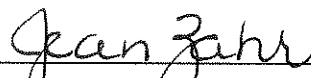
NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar, Mayor Ridenour

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: December 3, 2004

ORDINANCE NO. 3359-C.S.

AN ORDINANCE AMENDING SECTION 19-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, R-1, TO PLANNED DEVELOPMENT ZONE, P-D(87), AS AN ADDITION TO P-D(87), PROPERTY LOCATED ON THE WEST SIDE OF TULLY ROAD, SOUTH OF PEARL STREET. (JAMES C. CHAMPION)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 19-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(87), as an addition to P-D(87):

R-1 to P-D(87) as an Addition to P-D(87)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the northeast Quarter of the northeast Quarter of Section 19, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

Starting at the northeast corner of said Section 19, thence  $S0^{\circ}34'48''E$ , 916.00 feet to a point on the east line of said Section 19; thence  $N89^{\circ}06'47''W$ , 45.01 feet, to the southeast corner of the property labeled as "Champion" on that Record of Survey filed in the office of the Recorder of Stanislaus County in Book 17 of Recorded Surveys, Page 96, said point being the True Point of Beginning; thence  $N89^{\circ}06'47''W$ , 186.51 feet to the southwest corner of that land added to the Champion land by Lot Line Adjustment #88-09 as recorded February 23, 1988, as instrument #011134; thence  $N0^{\circ}33'20''W$ , 65.44 feet to the northwest corner of said land in said Lot Line Adjustment #88-09; thence  $S83^{\circ}02'00''E$ , 51.93 feet to the northeast corner of said land in said Lot Line Addition #88-09; thence  $S89^{\circ}08'08''E$ , 134.99 feet to the northeast corner of said Champion property; thence  $S0^{\circ}34'48''E$ , 60.00 feet to the Point of Beginning;

Also including the westerly half of Tully Road and the southerly half of the alley, all being immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(87) Zone, if the plan for construction conforms in principle to the approved plan, or if changes are

approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Apartment complex.
2. Off-street parking as shown on the approved plans.

SECTION 3. ZONING MAP. Section Map 19-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in The Modesto Bee, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 26<sup>th</sup> day of October, 2004, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich  
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By [Signature]  
Community & Economic Development  
Department, Planning Division

Ord. No. 3359-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 3<sup>rd</sup> day of November, 2004, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar, Mayor Ridenour

APPROVED:   
MAYOR JIM RIDENOUR

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 3, 2004

**ORDINANCE NO. 3360- C.S.**

**AN ORDINANCE AMENDING SECTION 9-3-9 OF THE ZONING MAP TO REZONE FROM PROFESSIONAL OFFICE ZONE, P-O, TO PLANNED DEVELOPMENT ZONE, P-D(568), PROPERTY LOCATED ON THE NORTH SIDE OF SYLVAN AVENUE WEST OF CLAREMONT AVENUE. (ARCHITECTURE PLUS)**

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 9-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Professional Office Zone, P-O, to Planned Development Zone, P-D(568):

P-O to P-D(568)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the Northeast Quarter of Section 9, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, in the City of Modesto, County of Stanislaus, State of California, more particularly described as follows:

All of Parcel 1 as shown in Book 49 of Parcel Maps, Page 46, Stanislaus County Records;

Also including the northerly half of Sylvan Avenue, being immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(568) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Uses as allowed in the P-O (Professional Office) Zone.

SECTION 3. ZONING MAP. Section Map 9-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

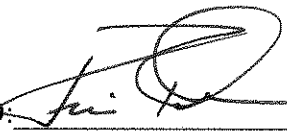
SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 3<sup>rd</sup> day of November, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar, Mayor Ridenour

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:


By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community & Economic Development  
Department – Planning Division

Ord. No. 3360-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> day of November, 2004, Councilmember Jackman, moved its final adoption, which motion being duly seconded by Councilmember Keating, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar, Mayor Ridenour

APPROVED:   
MAYOR JIM RIDENOUR

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 23, 2004

ORDINANCE NO. 3361-C.S.

AN ORDINANCE AMENDING SECTION 1-2.07 OF CHAPTER  
2 OF TITLE 1 OF THE MODESTO MUNICIPAL CODE  
RELATING TO PENALTY PROVISIONS.  
(REORGANIZATION OF DEPARTMENTS)

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 1-2.07 of Chapter 2 of Title 1  
of the Modesto Municipal Code is hereby amended to read as follows:

**1-2.07. SUPERVISION OF PRISONERS DURING SUCH WORK.**

Prisoners working on any public work of the City shall be under the custody of the Police Chief and under the supervision of the Public Works Director. The Public Works Director is hereby authorized and empowered to perform any and all acts necessary to carry out the provisions of Section 1-2.06 of this Code.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3361-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> day of November, 2004, Councilmember Hawn, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR, City Clerk

Effective Date: December 23, 2004

ORDINANCE NO. 3362-C.S.

AN ORDINANCE ADDING ARTICLE 17 TO CHAPTER 3 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO PUBLIC WORKS DEPARTMENT AND REPEALING ARTICLES 10 AND 12 OF CHAPTER 3 OF TITLE 2 OF THE MODESTO MUNICIPAL CODE RELATING TO OPERATIONS AND MAINTENANCE DEPARTMENT AND ENGINEERING AND TRANSPORTATION DEPARTMENT.  
(REORGANIZATION OF DEPARTMENTS)

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Article 17 is hereby added to Chapter 3 of Title 2 of the Modesto Municipal Code to read as follows:

**ARTICLE 17. PUBLIC WORKS DEPARTMENT**

**SEC. 2-3.1701. CREATION AND FUNCTIONS.**

A Public Works Department is hereby established. The functions of the Public Works Department shall include:

- (a) Perform or direct all phases of engineering work required in connection with the functions of the City and not otherwise assigned to another department by the City Manager.
- (b) Operate and maintain the City's utility services and such other public works facilities as are not otherwise assigned to another department by the City Manager.
- (c) Coordinate the planning, design, and inspection of engineering projects and services of the City.
- (d) Prepare and maintain records of the City.
- (e) Conduct engineering studies to determine the need for parking facilities, and recommend, plan, design, develop, operate and maintain on- and off-street parking facilities of the City.
- (f) Conduct traffic engineering studies, including accident analysis, to determine the need for and appropriate method for the control of traffic to

provide for the safe, convenient and economical movement of persons and vehicles on the public streets and ways of the City.

- (g) Plant and maintain street trees in accordance with a general plan for street trees.
- (h) Perform such other duties as may be assigned or required by the City Manager.
- (i) Manage City contracts to operate City Transit services.
- (j) Manage the operations and maintenance of the Transportation Center and Modesto Amtrak Station.
- (k) Manage and operate the Modesto City/County Airport.
- (l) Negotiate and monitor City recycling, garbage and green waste contracts.
- (m) Ensure compliance with state and federal mandates and regulations for areas of responsibility.
- (n) Manage and maintain the City's fleet and equipment with the exception of vehicles and apparatus belonging to the Fire Department.

#### **SEC. 2-3.1702. ORGANIZATION AND DIRECTION.**

There shall be a Public Works Director appointed by the City Manager and subject to the City Manager's general administrative direction. The Public Works Director, subject to the approval of the City Manager, shall organize and maintain such divisions in the Department as in the Director's judgment the operations may require, and shall be responsible for the direction and control of all functions assigned to the Department.

#### **SEC. 2-3.1703. ACTING PUBLIC WORKS DIRECTOR.**

In the case of absence or disability of the Public Works Director, the City Manager shall designate a person to perform the duties and exercise the powers of the Public Works Director.

#### **SEC. 2-3.1704. REFERENCES.**

- (a) Whenever this Code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the titles

Parking and Traffic Director, Director of Parking and Traffic, Engineering Services Director, Director of Engineering Services, Director of Utility Services, Public Works and Transportation Director, Operations and Maintenance Director, or Engineering and Transportation Director, they shall be deemed to refer to the Public Works Director of the City of Modesto in relation to any matter under the jurisdiction of that Director.

- (b) Whenever this Code or any ordinance, resolution or other official document or action of the City of Modesto refers to or uses the names Parking and Traffic Department or Department of Parking and Traffic; or Engineering Services Department or Department of Engineering Services; or Utility Services Department or Department of Utility Services or Public Works and Transportation Department; Operations and Maintenance Department; or Engineering and Transportation Department they shall be deemed to refer to the Public Works Department of the City of Modesto in relation to any matter under the jurisdiction of that Department.

SECTION 2. AMENDMENT OF CODE. Articles 10 and 12 of Chapter 3 of Title 2 of the Modesto Municipal Code are hereby repealed:

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

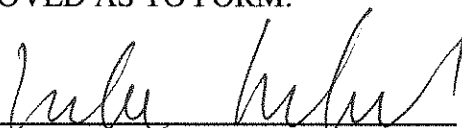
APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3362-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> day of November, 2004, Councilmember Hawn, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: \_\_\_\_\_

  
MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR, City Clerk

Effective Date: December 23, 2004

ORDINANCE NO. 3363-C.S.

AN ORDINANCE AMENDING SECTIONS 3-2.105, 3-2.204, 3-2.301, 3-2.304, 3-2.305, 3-2.306, 3-2.307, 3-2.308, 3-2.401, 3-2.402, 3-2.404, 3-2.501, 3-2.502, 3-2.601, 3-2.701, 3-2.808, 3-2.901, 3-2.1007, 3-2.1008, 3-2.1101, 3-2.1102, 3-2.1103, 3-2.1201, 3-2.1204, 3-2.1302, 3-2.1402, 3-2.1501, 3-2.1502, 3-2.1503, 3-2.1504, 3-2.1607, 3-2.1701 AND 3-2.1911 OF CHAPTER 2 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO TRAFFIC REGULATIONS. (REORGANIZATION OF DEPARTMENTS)

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Sections 3-2.105, 3-2.204, 3-2.301, 3-2.304, 3-2.305, 3-2.306, 3-2.307, 3-2.308, 3-2.401, 3-2.402, 3-2.404, 3-2.501, 3-2.502, 3-2.601, 3-2.701, 3-2.808, 3-2.901, 3-2.1007, 3-2.1008, 3-2.1101, 3-2.1102, 3-2.1103, 3-2.1201, 3-2.1204, 3-2.1302, 3-2.1402, 3-2.1501, 3-2.1502, 3-2.1503, 3-2.1504, 3-2.1607, 3-2.1701 and 3-2.1911 of Chapter 2 of Title 3 of the Modesto Municipal Code are hereby amended to read as follows:

**3-2.105. PUBLIC WORKS DIRECTOR.**

Public Works Director means the Public Works Director or designee of the City of Modesto.

**3-2.204. PERSONS OTHER THAN OFFICIALS SHALL NOT DIRECT TRAFFIC.**

Except for City employees performing a duty within the scope of their employment which necessitates the direction of traffic, no person other than an officer of the Police Department or a person deputized by the Police Chief, or a person authorized to do so by a police officer in an emergency, or a person authorized by law, shall direct or attempt to direct traffic by voice, hand or other signal, except that persons may operate when and as herein provided any mechanical pushbutton signal erected by order of the Public Works Director.

### **3-2.301. AUTHORITY TO INSTALL TRAFFIC-CONTROL DEVICES.**

- (a) The Public Works Director shall have the power and duty to place and maintain or cause to be placed and maintained official traffic-control devices when and as required under the traffic laws of the City to make effective the provisions of said laws.
- (b) Whenever the Vehicle Code of the State of California requires for the effectiveness of any provisions thereof that traffic-control devices be installed to give notice to the public of the application of such law, the Public Works Director is hereby authorized to install or cause to be installed the necessary devices subject to any limitations or restrictions set forth in the law applicable thereto.
- (c) The Public Works Director may also place and maintain or cause to be placed and maintained such additional traffic control devices as he/she may deem necessary to regulate traffic or to guide or warn traffic, but he/she shall make such determination only upon the basis of traffic engineering principles and traffic investigations and in accordance with such standards, limitations and rules as may be set forth in the traffic laws of the City, or as may be determined by ordinance or resolution of the Council.

### **3-2.304. INSTALLATION OF TRAFFIC SIGNALS.**

- (a) The Public Works Director shall install official traffic signals at those intersections and other places where traffic conditions are such as to require that the flow of traffic be alternately interrupted and released in order to prevent or relieve traffic congestion or to protect life or property from exceptional hazard.
- (b) The Public Works Director shall ascertain and determine the locations where such signals are deemed by him/her to be necessary for the preservation of the public safety by resort to field observations, traffic counts and other traffic information as may be pertinent.

### **3-2.305. LANE MARKINGS.**

The Public Works Director is hereby authorized to mark or caused to be marked center lines and lane lines upon the surface of the roadway to indicate the course to be traveled by vehicles and may place signs temporarily designating lanes to be used by traffic moving in a particular direction, regardless of the center line of the highway.

### **3-2.306. DISTINCTIVE ROADWAY MARKINGS.**

The Public Works Director is authorized to place and maintain or cause to be placed and maintained distinctive roadway markings as described in the Vehicle Code of the State of California on those streets or parts of streets where the volume of traffic or the vertical or other curvature of the roadway renders it hazardous to drive on the left side of such markings or signs and markings. Such marking or signs and markings shall have the same effect as similar markings placed by the State Department of Public Works pursuant to provisions of the Vehicle Code of the State of California.

### **3-2.307. AUTHORITY TO REMOVE OR DISCONTINUE TRAFFIC CONTROL DEVICES.**

The Public Works Director is hereby authorized to remove or discontinue the operation of any traffic control device not specifically required by state law or this chapter whenever he/she shall determine in any particular case that the conditions which warranted or required the installation no longer exist or obtain.

### **3-2.308. TRAFFIC CONTROL DEVICES. HOURS OF OPERATION.**

The Public Works Director shall determine the hours and days during which any traffic control device shall be in operation or in effect, except in those cases where such hours or days are specified in or pursuant to the provisions of this chapter, or by ordinance or resolution of the Council.

### **3-2.401. AUTHORITY TO PLACE AND OBEDIENCE TO TURNING MARKERS, INTERSECTIONS. MULTIPLE LANES.**

The Public Works Director is authorized to place or cause to be placed markers, buttons or signs within or adjacent to intersections indicating the course to be traveled by vehicles turning at such intersections. The Public Works Director is authorized to allocate and indicate more than one lane of traffic from which drivers of vehicles may make right- or left-hand turns, and the course to be traveled as so indicated may conform to or be other than as prescribed by law.

### **3-2.402. AUTHORITY TO PLACE RESTRICTED TURN SIGNS.**

The Public Works Director is hereby authorized to determine those intersections at which drivers of vehicles shall not make a right turn, left turn or U-turn, and shall place proper signs at such intersections, when such signs are required by the State Vehicle Code. The making of such turns may be prohibited between certain hours of any day and permitted at other hours, in which event the same shall be

plainly indicated on the signs or they may be removed when such turns are permitted.

### **3-2.404. AUTHORITY TO PROHIBIT TURNS AGAINST TRAFFIC STOP SIGNAL.**

The Public Works Director is hereby authorized to determine those intersections at which drivers of vehicles shall not make right or left turns against a red or stop signal and shall erect proper signs giving notice of such prohibition. No driver of a vehicle shall disobey the directions of any such sign.

### **3-2.501. ONE-WAY STREETS AND ALLEYS.**

The Council shall determine and designate one (1) way streets or alleys or portions thereof, by resolution, which designation shall become effective when appropriate signs are in place giving notice of said designations to the public. Whenever any resolution of this City designates any one (1) way street or alley, the Public Works Director shall cause to be placed and maintained signs giving notice thereof, and no such regulations shall be effective unless such signs are in place. Signs indicating the direction of lawful traffic movement shall be placed at every intersection where movement of traffic in the opposite direction is prohibited.

### **3-2.502. TRAFFIC CONTROL THROUGH CERTAIN ALLEYS.**

Whenever any resolution of this City designates an alley as a one (1) way alley it shall be unlawful to drive any vehicle through said alley except in the direction authorized, or to stop or park any vehicle in said alley except on the side thereof designated by the Public Works Director and as near the property line as is practicable. The Public Works Director shall cause signs to be erected on one (1) way alleys indicating the side or portion thereof upon which loading or unloading is authorized.

### **3-2.601. STOP SIGNS.**

The Public Works Director is authorized to erect and maintain stop signs at those locations where he/she deem such controls to be necessary in order to protect the public safety. When signs are erected giving notice thereof, drivers of vehicles shall stop at the entrance or entrances to such intersections.

### **3-2.701. YIELD-RIGHT-OF-WAY SIGNS.**

Pursuant to the authority contained in Section 21356 of the Vehicle Code of the State of California, the Public Works Director is authorized to erect or cause to be erected yield-right-of-way signs at one (1) or more approaches to an intersection of streets and highways in the City which are not through streets.

### **3-2.808. USE OF COASTERS, ROLLER SKATES AND SIMILAR DEVICES RESTRICTED.**

It shall be unlawful for any person upon roller skates or riding on or by means of a skateboard, coaster or similar device to go upon any roadway in the City or in any City-owned parking lot or City-owned parking structure or in the City of Modesto Transportation Center or in the City of Modesto Amtrak Station or upon the sidewalk in any business district as defined by Section 235 of the Vehicle Code of the State of California or any property of the Modesto City School District, Sylvan Unified School District or Empire Union School District. Provided, however, the Council may, by resolution, grant approval for the use of roadways, City-owned parking lots, City-owned parking structures, and sidewalks for organized skating events of community-wide interest and importance, and that the Public Works Director, or such persons as may be designated by the Director, may grant approval for use of City park parking lots for organized skating events of community-wide interest and importance. In granting such approval, the Council and the Director or the Director's designee may impose such conditions, restrictions and requirements as they deem necessary or desirable in order to protect the public interest and promote the general welfare.

### **3-2.901. CROSSWALKS.**

The Public Works Director is hereby authorized to establish, designate and shall cause to be maintained crosswalks at intersections and other places by appropriate devices, marks or lines upon the surface of the roadway.

### **3-2.1007. STOPPING OR PARKING PROHIBITED. SIGNS REQUIRED.**

The Public Works Director may appropriately sign or mark or cause to be signed or marked any place where said Director determines that it is necessary in order to eliminate dangerous traffic hazards, and when so signed or marked, no person shall stop, stand or park a vehicle in any of said places.

### **3-2.1008. EMERGENCY SIGNS.**

- (a) Whenever the Public Works Director shall determine that an emergency traffic congestion is likely to result from the holding of public or private assemblages, gatherings or functions, or for other reasons, he/she shall have the power and authority to order temporary signs to be erected or posted indicating that the operation, parking or standing of vehicles is prohibited on such streets and alleys as he/she shall direct during the time such temporary signs are in place. Such signs shall remain in place only during the existence of such emergency, and said Director shall cause such signs to be removed promptly thereafter.
- (b) When signs authorized by the provisions of this section are in place giving notice thereof, no person shall operate, park or stand any vehicle contrary to the directions and provisions of such signs.

### **3-2.1101. CURB MARKINGS TO INDICATE NO STOPPING AND PARKING REGULATIONS.**

- (a) The Public Works Director is hereby authorized, subject to the provisions and limitations of this chapter, to place and when required herein shall cause to be placed, the following curb markings to indicate parking or standing regulations, and said curb markings shall have the meanings as herein set forth:
  - (1) Red shall mean no stopping, standing or parking at any time except as permitted by the Vehicle Code of the State of California and except that a bus may stop in a red zone marked or signed as a bus zone.
  - (2) Yellow shall mean no stopping, standing or parking at any such times of any day as are designated, for any purpose other than the loading or unloading of passengers or materials, provided that the loading or unloading of passengers shall not consume more than three (3) minutes nor the loading or unloading of materials more than twenty (20) minutes.
  - (3) White shall mean no stopping, standing or parking for any purpose other than loading or unloading of passengers or for the purpose of depositing mail in an adjacent mailbox which shall not exceed three (3) minutes and such restrictions shall apply at such times as are designated.

- (4) Green shall mean no standing or parking for longer than twenty-four (24) minutes at any time between 9:00 a.m. and 6:00 p.m. of any days except Sundays.
  - (5) Blue shall mean no stopping, standing or parking at any time, except that vehicles which display a disabled person's license plate or placard, or a disabled veteran's license plate or placard, as provided by the Vehicle Code of the State of California may stop, stand or park in the spaces so designated.
- (b) When the Public Works Director, as authorized under this chapter, has caused curb markings to be placed, no person shall stop, stand or park a vehicle adjacent to any such legible curb markings in violation of any of the provisions of this section.

### **3-2.1102. UNAUTHORIZED PAINTING OF CURBS.**

No person other than the Public Works Director, shall be authorized to cause to be painted any curb surface unless granted permission to do so by the City.

### **3-2.1103. AUTHORITY TO ESTABLISH LOADING ZONES.**

The Public Works Director is hereby authorized to determine and establish zones and time limits for the loading and unloading of motor vehicles in designated streets, or portions thereof, in the City, which regulations shall become effective without curb markings when appropriate signs are placed giving notice of said regulations to the public. The zones authorized by this section shall include any or all of the following: Loading zone, bus loading zone, freight loading zone and passenger loading zone.

### **3-2.1201. RESTRICTION OR PROHIBITION OF PARKING.**

Any other provisions of this chapter to the contrary notwithstanding, the Public Works Director may authorize, restrict or prohibit the parking of motor vehicles in designated streets, or portions thereof, in the City if the general welfare and safety of the citizens so require it, which regulations shall become effective when appropriate signs or markings are in place giving notice of said regulations to the public.

### **3-2.1204. PARKING SPACE MARKINGS.**

The Public Works Director is authorized to install and maintain parking space markings to indicate parking spaces adjacent to curbs where authorized parking is permitted.

When such parking space markings are placed in the street subject to other and more restrictive limitations, no vehicles shall be stopped, left standing or parked other than within a single space unless the size or shape of such vehicle makes compliance impossible.

### **3-2.1302. INTERSTATE TRUCK ROUTES.**

- (a) Use of Interstate Truck Routes. It shall be unlawful for the operator of any vehicle or combination of vehicles authorized to operate in the State of California by Vehicle Code Section 35401.5 to operate said vehicle or combination of vehicles upon any street other than on an interstate truck route.
- (b) Designation of Interstate Truck Routes. The Council is authorized to designate interstate truck routes by resolution, which designation shall become effective when appropriate signs are in place giving notice of said designation to the public.
- (c) Procedure for Designation of Interstate Truck Routes. The procedure for obtaining designation of interstate truck routes shall be as follows:
  - (1) Application by individuals, firms or corporations for designation of routes to interstate truck terminals shall be made to the Public Works Director. The application shall include the name and address of the applicant, the location of the terminal, the preferred route and alternates if appropriate, evidence that terminal parking and entries are adequate, and other considerations noted by the applicant that need to be resolved. The application shall be accompanied by a non-refundable application fee to be established from time to time by resolution.
  - (2) The Public Works Director shall cause an investigation to be made of the proposed route to include traffic safety considerations, adequacy of street surfaces and geometrics, approval or disapproval of the California Department of Transportation, an estimate of the cost of establishing the route, and other considerations as appropriate.

- (3) If the Public Works Director determines, upon completion of the investigation, that the proposed route is acceptable, he/she shall recommend to the Council that the route be adopted. If the Council denies the application, its action shall be final.
- (4) If the Council adopts the route, the applicant shall have thirty (30) days in which to deposit the estimated cost for establishing the route with the Finance Director.
- (5) If a route is adopted, within thirty (30) days after completion of the route the City shall make an accounting and any overpayment will be returned to the applicant. If the deposit was insufficient to cover cost for establishing the route, the applicant shall pay the additional cost within thirty (30) days after being billed therefore.
- (6) If the Public Works Director determines, upon completion of the investigation, that the route is not acceptable, he/she shall notify the applicant that the application is denied, noting the reasons for the denial.
- (7) If the Public Works Director denies an application, the applicant may appeal the denial to the Council in accordance with the provisions of Chapter 4 of Title 1 of this Code.
- (8) If the Council grants the appeal, the establishment of the route shall be in accordance with the procedures specified in subsections (c) (4) and (5) above.
- (9) Termination of Interstate Truck Routes. The Council may, in its sole discretion, terminate interstate truck route designations or designate alternate routes.

### **3-2.1402. REGULATION OF SPEED BY TRAFFIC SIGNALS.**

The Public Works Director is authorized to regulate the timing of traffic signals so as to permit the movement of traffic in an orderly and safe manner at speeds slightly at variance from the speeds otherwise applicable within the district or at intersections, and may erect appropriate signs giving notice thereof.

### **3-2.1501. ESTABLISHMENT OF PARKING METER ZONES.**

The Council from time to time may establish and designate parking meter zones as parking conditions require. The time limitations for legal parking in parking

meter zones shall be those established by the Public Works Director based on engineering surveys, and the time limitations shall be indicated by appropriate signs posted in such zones.

The locations and boundaries of the various zones are as shown on that certain map being marked and designated a "Parking Meter Zoning Map, City of Modesto," attached hereto. Said map and all notations, references and other information shown thereon are hereby made a part of this chapter.

Where uncertainty exists as to the boundary of any zone, the following rules shall apply:

- (a) Wherever the zone boundary is indicated as being approximately upon the center line of a street, alley or block, or along or adjacent to a property line, then, unless otherwise definitely indicated on the map, the center line of such street, alley or block, or such property line, shall be construed to be the boundary of such zone.
- (b) Where the zone lines are shown adjacent to the street property line, the zone boundary shall be construed to be the street property line.
- (c) Where such zone boundary lines cannot be determined by the above rules, their location may be found by the use of the scale appearing upon the map.
- (d) Where the application of the above rules does not clarify the zone boundary location, the Council shall interpret the map.

Said Parking Meter Zoning Map may, for convenience, be divided into individual section maps for the purpose of more readily identifying the territory included within each parking meter zone. Said Parking Meter Zoning Map is hereby adopted and approved as the official Parking Meter Zoning Map of the City of Modesto.

Changes in the boundaries of the parking meter zones shall be made by ordinance adopting an amended parking meter zoning map, or section or unit of said Parking Meter Zoning Map, which said amended map or section or unit, when so adopted, shall be published in the manner prescribed by law and become a part of this chapter.

### **3-2.1502. INSTALLATION OF METERS.**

The Public Works Director shall install parking meters in the parking meter zones established by the Council in such numbers and at such places as in his/her judgment may be necessary for the regulation, control, and inspection of the parking of vehicles therein.

### **3-2.1503. METHOD OF PARKING.**

The Public Works Director shall cause lines or markings to be painted or placed upon the pavement adjacent to each parking meter designating the parking space for which said meter is to be used, and each vehicle parked adjacent or next to any parking meter shall park within the lines or markings so established. It shall be unlawful for any person to back into a parking space when signs are erected giving notice thereof.

### **3-2.1504. TIME LIMITS AND RATES OF FEES.**

- (a) It shall be unlawful for any person to permit any vehicle registered in his/her name or operated or controlled by him/her to be parked in any parking space in the parking meter zone for more than the time indicated by proper signs placed on the parking meter or zone indicating the maximum parking time allowed in such parking space. Each period of overparking for more than the period stated on the parking meter or time limit sign shall constitute a separate offense.
- (b) It shall be unlawful for any person to permit any vehicle registered in his/her name or operated or controlled by him/her to be parked in any parking space controlled by a parking meter at any time during which the meter is displaying a signal indicating that the space is illegally in use, except during the time necessary to set the meter to show legal parking. Each period of overparking while the meter is displaying said signal for more than the period stated on the parking meter or time limit sign constitutes a separate offense.
- (c) The time limits for the parking of vehicles in parking meter zones shall be established by the Public Works Director based upon engineering surveys. The rate of fees for such parking shall be one cent (\$0.01) per twelve (12) minutes or fraction thereof.

### **3-2.1607. RESERVED PARKING ON OFF-STREET PARKING LOTS.**

The Public Works Director is hereby authorized to reserve and identify, by appropriate markings or signs which indicate types of vehicles, location and time limits, such parking spaces as are necessary for any use approved by the City Manager on any off-street parking facility owned or operated by the City of Modesto, including designation of spaces to be used only by disabled persons and disabled veterans. Only vehicles authorized by the Public Works Director shall use such parking spaces during the time limits indicated, and use by any unauthorized vehicle shall be unlawful.

### **3-2.1701. PERMITS: AUTHORITY AND FEES.**

The Police Chief is hereby authorized to grant permits for the temporary use of the following public facilities:

- (a) Temporary closing of City streets;
- (b) Temporary use of City sidewalk areas;
- (c) Temporary use of on-street parking spaces; and
- (d) Temporary use of off-street parking spaces.

Before granting a permit for the temporary use of off-street parking spaces as provided in subsection (d) of this section, the Police Chief shall obtain the recommendation of the Public Works Director.

Every person who seeks to obtain the above-described permit shall pay to the Police Chief an application fee in an amount as established from time to time by resolution of the City Council to cover the costs of processing the permit application.

### **3-2.1911. DURATION AND ISSUANCE OF PERMITS.**

There shall be no limit to the number of annual permits issued to any residential address within a Residential Permit Parking Zone, provided that the resident can prove ownership or control of each of the vehicles for which an annual permit is issued. A separate application shall be filed for each motor vehicle. Each Residential Parking Permit issued by the Public Works Director shall be valid for a maximum of one (1) year unless otherwise stated on the permit. The City Manager shall cause to be prepared and issued, effective on January 1st of each year, a distinctively colored sticker for issuance to permittees of Residential

Parking Zones, which sticker shall be affixed to the motor vehicle as required herein.

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3363-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> day of November, 2004, Councilmember Hawn, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_



JEAN ZAHR, City Clerk

Effective Date: December 23, 2004

ORDINANCE NO. 3364-C.S.

AN ORDINANCE AMENDING SECTIONS 4-2.09 AND 4-2.30 OF CHAPTER 2 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO MISDEMEANORS; SECTIONS 4-3.01, 4-3.02, 4-3.04, 4-3.06, 4-3.07.2, 4-3.09, 4-3.10, 4-3.11, 4-3.12, 4-3.13, 4-3.14, 4-3.19, 4-3.20, AND 4-3.21 OF CHAPTER 3 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO MOVING OF BUILDINGS; SECTIONS 4-4.401, 4-4.404, 4-4.503, 4-4.509, 4-4.510, 4-4.511, 4-4.513, 4-4.515, 4-4.516, 4-4.517, 4-4.518, 4-4.601, 4-4.602, 4-4.603, 4-4.604, 4-4.605, 4-4.801, 4-4.802, 4-4.802.1, AND 4-4.804 OF CHAPTER 4 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO SUBDIVISION OF LAND; SECTIONS 4-5.03, 4-5.05 AND 4-5.06 OF CHAPTER 5 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO REGULATION OF STREETS AND SIDEWALKS; SECTIONS 4-6.101, 4-6.201, 4-6.202, 4-6.203, 4-6.204, 4-6.206, 4-6.207, 4-6.208, 4-6.209, 4-6.210, 4-6.301, 4-6.303, 4-6.306, 4-6.402, 4-6.501, 4-6.502, 4-6.503, 4-6.504, 4-6.801, AND 4-6.901 OF CHAPTER 6 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO TAXICABS; SECTIONS 4-7.1103, AND 4-7.1106 OF ARTICLE 11 OF CHAPTER 7 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO COLLECTION OF PRUNED REFUSE; SECTION 4-8.10 OF CHAPTER 8 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO REGULATION OF PARADES; AND SECTIONS 4-15.103, 4-15.104, 4-15.105, 4-15.106, 4-15.203, 4-15.301, 4-15.302, AND 4-15.401 OF CHAPTER 15 OF TITLE 4 OF THE MODESTO MUNICIPAL CODE RELATING TO OUTDOOR DINING IN THE PUBLIC RIGHTS-OF-WAY PERMITTED.  
(REORGANIZATION OF DEPARTMENTS)

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Sections 4-2.09 and 4-2.30 of Chapter 2 of Title 4 of the Modesto Municipal Code is hereby amended to read as follows:

**4-2.09. DRINKING IN PUBLIC.**

No person shall drink and/or be in possession of an open container, including, but not limited to, any bottle, can or other receptacle containing any beer, wine or

other intoxicating beverage on any public street, sidewalk, alley, playground, or walkway except:

- (a) In the geographic area immediately surrounding a community-wide event which has received the prior written approval of the City Manager which shall specify the boundaries of the exempted area and the duration of the exemption;
- (b) In or on the property of an establishment, business place, outdoor dining area or other location properly licensed for the consumption of alcoholic beverages under the Alcoholic Beverage Control Act of the State of California.

No person shall drink and/or be in possession of an open container containing any intoxicating beverage on any private parking lot held open to the public except for intoxicating beverages dispensed or consumed on a private parking lot pursuant to a license issued for that purpose by the State of California. Nor shall any person drink and/or be in possession of any open container containing any intoxicating beverage on any public parking lot except those that directly abut a City park, and only with advance written approval of the Public Works Director. This section shall not be deemed to make punishable any act or acts which are prohibited by any law of the State of California.

#### **4-2.30. TELEGRAPH AND TELEPHONE APPARATUS.**

It shall be unlawful and a misdemeanor:

- (a) For any person wantonly or negligently to break, remove, damage, disturb, or interfere with any wire, pole, apparatus or appurtenance of any telephone or telegraph company.
- (b) For any person not in the course of service in or for such company to break, remove, damage, disturb or interfere with any wire, pole, apparatus or appurtenance belonging to or being used by any telephone or telegraph company, the same being lawfully in place, without having first obtained a specific permit to do so from the local superintendent or manager of such company, or in case of his/her absence or refusal, and when such wire, pole, apparatus or appurtenances are in, or over or across any public street, way or square, from the Public Works Director.
- (c) For any person to climb or ascend any pole, mast or tower of any telephone, telegraph, fire-alarm or electric light system without the consent first had of the officer or person having local superintendence of the same,

except that in cases of emergency such permission may be given by the Public Works Director.

SECTION 2. AMENDMENT OF CODE: Sections 4-3.01, 4-3.02, 4-3.04, 4-3.06, 4-3.07.2, 4-3.09, 4-3.10, 4-3.11, 4-3.12, 4-3.13, 4-3.14, 4-3.19, 4-3.20, and 4-3.21 of Chapter 3 of Title 4 of the Modesto Municipal Code are hereby amended to read as follows:

**4-3.01. PERMIT REQUIRED.**

It shall be unlawful for any person to move or cause to be moved any building in, into, through, or from the City without first obtaining a permit therefor from the Public Works Director. Such permit shall be known as a "House Moving Permit".

**4-3.02. APPLICATION FOR PERMIT.**

Any person desiring such a permit shall file with the Public Works Director an application therefor in writing on a form to be furnished by the City for that purpose.

Such application shall specify the following:

- (a) The character and size of the building to be moved;
- (b) The reason for such moving;
- (c) The use, purpose and occupancy for which said building or structure is to be used;
- (d) The location from which and to which said building is to be moved;
- (e) A plot plan showing the proposed location of the building upon the property to which said building is to be moved, provided said location is in the City;
- (f) The streets on, over or through which it is desired to move said building;
- (g) Whether the building conforms to the zoning laws in the location to which it is to be moved.

#### **4-3.04. WHEN PERMIT SHALL BE DENIED.**

No permit shall be issued to move any building or structure which, in the opinion of the Public Works Director or the Community Development Director:

- (a) Is so constructed or in such condition as to be dangerous;
- (b) Is infested with pests or insanitary;
- (c) If it is a dwelling or habitation, is unfit for human habitation;
- (d) Is so dilapidated, defective, unsightly or in such a condition of deterioration or disrepair that its relocation at the proposed site would cause appreciable harm to or be materially detrimental to the property or improvements in the district within a radius of one thousand (1000) feet from the proposed site;
- (e) If the proposed use is prohibited by the zoning laws of the City;
- (f) If the structure is of a type prohibited at the proposed location by any law of the City; or
- (g) If the moving of the building or structure causes unreasonable damage to the trees, plants and shrubs on and along the public streets.

Provided, however, that if the condition of the building or structure, in the judgment of the Community Development Director, admits of practicable and effective repair, the permit may be issued upon the terms and conditions as set forth in Section 4-3.05 of this Code.

#### **4-3.06. ESTIMATE OF COST AND DEPOSIT.**

The applicant shall also deposit with the City Clerk a cash deposit or a savings and loan certificate and share in a form approved by the City Attorney in accordance with Article 6 of Chapter 4 of Title 2 of the Modesto Municipal Code sufficient to cover the cost to the City as estimated by the Public Works Director, of trimming, moving, removing or replanting of trees and/or shrubs, and of moving, removing, or displacing any pole or other structure, supporting any wires, cables or other equipment belonging to the City or the cutting, displacing or changing the location of any wire, cable or other equipment upon said poles or structures belonging to the City.

#### **4-3.07.2. CLEARANCE OF SITE AND SAFETY MEASURES REQUIRED.**

Prior to the issuance of a permit to move a building, the owner of the property from which the building is to be moved or his/her agent, shall file with the City Clerk a bond or other form of security in favor of the City of Modesto conditioned as follows:

- (a) Before any work is started on a building or structure, the permittee or his/her authorized agent shall notify the appropriate utilities in order that all gas, water and oil pipelines that are to be disconnected from the building may be securely capped and sealed.
- (b) Immediately after the moving of any building or structure, the permittee or his/her authorized agent shall securely barricade all basement excavations and other holes or openings.
- (c) Within ten (10) days after the moving of any building or structure, the permittee or his/her authorized agent shall complete the following work:
  - (1) Securely close and seal any sanitary piping located on the property.
  - (2) Fill with dirt or sand any septic tanks or cesspools located on the property.
  - (3) Fill any openings, excavations, or basements remaining on the land with dirt or sand to street level or the natural level of adjoining property unless otherwise directed by the Public Works Director.
  - (4) Remove any buried underground tanks formerly used for storage of flammable liquids as may be required by the Fire Department.
  - (5) Remove all refuse, debris and waste materials from the property.

The bond required by this section shall be in an amount equal to the cost of the work proposed to be done, as estimated by the Public Works Director.

The bond may be in the form of a corporate surety bond, cash deposit, saving and loan certificate, or an instrument of credit.

An extension of time for completion of the work required by this section may be granted by the Public Works Director, when, in his/her discretion, circumstances justify such an extension; but no such extension shall release any bond or other security furnished pursuant to this section.

#### **4-3.09. ISSUANCE OF PERMIT.**

The Public Works Director shall approve the issuance of a House Moving Permit when all the necessary requirements and conditions of this chapter have been complied with. It then shall be the duty of the City Clerk to issue the permit.

#### **4-3.10. SUSPENSION OR REVOCATION OF PERMIT.**

The Public Works Director, at any time, for sufficient cause, may revoke or suspend any permit granted under this chapter.

#### **4-3.11. CONTROL AND SUPERVISION.**

Every building which is moved on, over or through any public street, way or park in the City shall be under the control of the Public Works Director and every such building shall be moved in a careful manner and the work shall be prosecuted with diligence and to the satisfaction and approval of said Public Works Director. This section in no way relieves the person having charge of the moving of any building of his/her obligation to furnish proper supervision.

#### **4-3.12. THIRTY-SIX TO FORTY-EIGHT HOUR NOTICE REQUIRED.**

Notice must be given by the person to whom the permit is issued, or his/her representative, to the Public Works Department and the Police Department of the City not less than thirty-six (36) hours nor more than forty-eight (48) hours before the actual work of moving a building or structure is to commence.

#### **4-3.13. DEFAULT IN PERFORMANCE OF CONDITIONS.**

Whenever a default has occurred in the performance of any term or condition of any permit, written notice thereof shall be given to the permittee by the Public Works Director, said notice to state the work to be done, the estimated cost thereof, and the period of time deemed to be reasonably necessary to complete such work. After receipt of such notice, the permittee must, within the time therein specified, either cause the work to be done or pay over to the City Clerk of the City the estimated cost of doing the work, as set forth in the notice, plus ten (10) percent of said estimated cost. Upon receipt of notice from the City Clerk that the permittee has deposited such money, the Public Works Director shall cause the required work to be performed and completed.

If the permittee defaults, the City shall have the option, in lieu of completing the work required, to demolish the buildings or structure and to clear, clean and restore the site or sites.

#### **4-3.14. APPROVAL OF ROUTE.**

The streets over which any building or structure is to be moved must be approved by the Public Works Director and the Police Chief.

#### **4-3.19. TREES, PLANTS AND SHRUBS.**

In the event that the moving of any building for which a permit shall have been granted hereunder makes it necessary to trim, move, remove or replant any tree, plant or shrub belonging to or under the control of the City, the person to whom such permit has been granted, or his/her authorized representative, shall notify the Public Works Director at least forty-eight (48) hours prior to the time that the moving of such building will necessitate the removal of such obstructions.

The person to whom said permit is granted shall not at the expiration of said time notice or at any time, trim, move, remove, replant or otherwise disturb such trees, plants, or shrubs; and such work shall be done only by the authorized workmen of the City unless otherwise approved and so ordered by the Public Works Director.

The person to whom said permit is granted shall pay to said City any and all costs or expense for the trimming, moving, removing or replanting of any trees, plants or shrubs or of any damage thereto.

#### **4-3.20. REPAIRS TO PUBLIC PROPERTY.**

In the event that the moving of any building for which a permit shall have been granted hereunder causes damage to the public streets and/or other public property, in addition to any other remedies the City may have, the Public Works Director may cause such damage to be repaired and the cost thereof shall be deducted from the deposit required by Section 4-3.06 hereof, or he/she may require the person to whom such a permit has been granted, or his/her authorized representative, upon written notification from the Public Works Director to make all necessary repairs to such streets and/or property; provided, however, that should said person to whom said permit has been granted, and to whom said notice has been given, or his/her authorized representative, fail to make said necessary repairs within the period of time designated in said written notice, said Public Works Director may cause such necessary repairs to be made and the cost thereof deducted from the deposit required by Section 4-3.06 hereof.

#### **4-3.21. REFUNDING OF DEPOSITS.**

When the moving of any building for which a permit has been granted is completed, and all damage to public streets and/or other public property has been

repaired to the satisfaction of the Public Works Director and all costs of repairing damage and/or performing other work as provided herein, have been paid, and the deposit as required by Section 4-3.06 hereof, or such portion thereof then remaining unused under the provisions of this chapter shall be refunded upon surrender of the deposit receipt representing the said money so deposited. Should the cost, however, of repairing damages and/or performing other work as in this chapter provided, exceed the total amount of money deposited, the person to whom said permit was granted shall be held liable for the amount of damage and/or other costs which are in excess of the amount deposited, and it shall be the duty of the City Clerk, upon receipt of the request from the Public Works Director, to collect such part of the claim which is in excess of the deposit from the person to whom the permit was granted.

SECTION 3. AMENDMENT OF CODE. 4-4.401, 4-4.404, 4-4.503, 4-4.509, 4-4.510, 4-4.511, 4-4.513, 4-4.515, 4-4.516, 4-4.517, 4-4.518, 4-4.601, 4-4.602, 4-4.603, 4-4.604, 4-4.605, 4-4.801, 4-4.802, 4-4.802.1, and 4-4.804 of Chapter 4 of Title 4 of the Modesto Municipal Code are hereby amended to read as follows:

**4-4.401. FILING AND DEPARTMENTAL APPROVAL.**

- (a) **Number and Time of Filing.** Twenty (20) copies of a tentative map and statement of the proposed subdivision of any land shall be filed with the Planning Commission at least thirty-five (35) days prior to the meeting of the Commission at which consideration is desired.
- (b) **Acceptance.** The representative of the Planning Commission authorized to receive such maps shall examine any such map upon presentation and shall not accept such map unless the same is in full compliance with the law and of this article as to form, the data, information and other matters required to be shown thereon or furnished therewith. The tentative map shall not be considered as filed until stamped, signed and dated by said representative.
- (c) **Distribution.** Within ten (10) days of the filing of a tentative map, the Secretary of the Planning Commission shall transmit copies of such map and notice of the filing of the map to the governing board of any elementary, high school or unified school district within the boundaries of which the subdivision is proposed to be located. Copies of the tentative map shall also be sent to the Public Works Director, Chief Engineer of the Modesto Irrigation District, District Manager of the Pacific Gas and

Electric Company, District Manager of the Pacific Telephone and Telegraph Company, and such other department heads and agencies as deemed advisable, and if a state highway is concerned, to the District Engineer of the Department of Transportation, State of California.

- (d) **Action by Interested Agency or Department.** The governing board of any school district or other agency or department receiving a notice of the filing of a tentative map or a copy of the tentative map may respond in writing to such notice or tentative map within twenty (20) working days of the date on which such notice or tentative map was mailed by the Secretary of the Planning Commission. In the event that the governing board of any school district or other agency or department fails to respond to a notice of filing or a tentative map within said period, such failure to respond shall be deemed approval of the proposed subdivision by the school district, agency, or department.

#### **4-4.404. ACTION ON TENTATIVE MAP.**

- (a) **Action by Planning Commission.** The Planning Commission shall review the tentative map to determine whether it is in conformity with the provisions of law and of this chapter and upon that basis, within fifty (50) days after the filing of the tentative map, adopt a resolution approving, conditionally approving or disapproving the tentative map. The Planning Commission is authorized to report its action directly to the subdivider and shall also transmit to the Public Works Director a copy of the tentative map and a copy of the resolution setting forth the action of the Planning Commission.
- (b) **Consistency With General Plan.** A tentative map shall not be approved or conditionally approved by the Planning Commission unless the Planning Commission finds that the proposed subdivision, together with the provisions for its design and improvements, is consistent with the General Plan and applicable specific plans of the City.
- (c) **Discharge of Waste.** In connection with their review of a tentative map, the Planning Commission shall determine whether the discharge of waste from the proposed subdivision into the existing sewer system would result in violation of existing requirements prescribed by the California Regional Water Quality Control Board pursuant to Division 7 (commencing with Section 13000) of the Water Code of the State of California. In the event that the Planning Commission finds that the proposed waste discharge would result in or add to violation of requirements of such board, it may disapprove the tentative subdivision map.

- (d) **Limitations on Approval.** A tentative map shall not be approved or conditionally approved by the Planning Commission if it makes any of the following findings:
- (1) That the proposed map is not consistent with applicable general and specific plans.
  - (2) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
  - (3) That the site is not physically suitable for the type of development.
  - (4) That the site is not physically suitable for the proposed density of development.
  - (5) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
  - (6) That the design of the subdivision or the type of improvements is likely to cause serious public health problems.
  - (7) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision. In this connection, the Planning Commission may approve a map if it finds that alternate easements, for access or for use, will be provided and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction.
- (e) **Reports and Recommendations.** Any reports or recommendations on the map or maps of any subdivision submitted to the Planning Commission or City Council shall be submitted in writing to the subdivider at least three (3) days prior to any hearing or action on the map or maps by the Planning Commission or City Council. Such required submission in writing shall be deemed complied with when such reports or recommendations are placed in the mail, bearing proper postage, and directed to the subdivider at his/her address shown on the map.
- (f) **Appeal.** If the subdivider or any interested person is dissatisfied with any action of the Planning Commission with respect to the tentative map, or

the kinds, nature and extent of the improvements required by the Planning Commission, he/she may, within fifteen (15) days after such action is taken by the Planning Commission, appeal in writing to the City Council for a public hearing thereon. The City Council shall hear the appeal, upon notice being given in accordance with the provisions of Section 66451.3 of the Government Code and to the appellant and the Planning Commission, within thirty (30) days after the date of filing the appeal, unless the appellant consents to a continuance. At the time fixed for the hearing the City Council shall proceed to hear the testimony of the appellant or any witnesses in his/her behalf. It may also hear the testimony of other competent persons respecting the character of the neighborhood in which the subdivision is to be located; the kinds, nature and extent of improvements; or the quality or kinds of development to which the area is best adapted; and any other phase of the matter with respect to which it may desire to inquire into. Upon conclusion of the hearing the City Council shall, within ten (10) days, declare its findings based upon the testimony and documents produced before it. It may sustain, modify, reject or overrule any recommendations or rulings of the Planning Commission and may make such findings as are not inconsistent with the provisions of this chapter and the Subdivision Map Act.

- (g) **Presence of Subdivider.** The subdivider or his/her representative should be present at the time set for the consideration of the tentative map.
- (h) **Extension of Time Limits.** The time limits for acting and reporting on tentative maps as specified in this section may be extended by mutual consent of the subdivider and the Planning Commission or City Council as the case may be.
- (i) **Information To Be Furnished to Public Works Director.** When the approval or conditioned approval of the tentative map of any subdivision has become final, the subdivider shall furnish the following information to the Public Works Director and shall receive his/her authorization prior to construction of any of the improvements or preparation of the final map:
  - (1) Typical cross sections and proposed final finished grades of all roads, streets and highways in the proposed new subdivision, together with a profile showing the relation between finished grade and existing ground elevations.
  - (2) Proposed lengths, size and type of any pipes, culverts or structures necessary for drainage, erosion control or the public safety with plans and specifications therefor.

- (3) Any information required by the conditional approval of the Planning Commission or City Council.
- (4) Elevations shall be referenced to the Modesto City Datum.

#### **4-4.503. FILING PARCEL MAPS.**

- (a) **Filing Within Twenty-Four Months of Tentative Approval.** The subdivider or his/her agent may file a parcel map with the Public Works Director for his/her examination and certification within twenty-four (24) months after the approval or conditional approval of the tentative map. A map shall be deemed to be filed when it is accepted by the City as being in compliance with the provisions of this chapter and in substantial compliance with the tentative map. The twenty-four (24) month period shall not include any days during which the final map is being reviewed by the City. Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the Planning Commission may extend the time for filing a parcel map for a period or periods not exceeding two (2) years if it determines that conditions affecting the parcel map have not substantially changed. In any case where a parcel map has not been recorded within twenty-four (24) months or such extended period of time as may be granted by the Planning Commission, approval of a new tentative parcel map shall be required.

If a subdivider's application for an extension of time for filing a parcel map is denied by the Planning Commission, the subdivider may appeal to the City Council within fifteen (15) days after the Planning Commission has denied the time extension. The City Council shall hear such appeal in accordance with the provisions of Section 4-4.404(f) of this chapter.

A parcel map shall be prepared by a registered civil engineer or licensed land surveyor and shall substantially conform to the tentative parcel map and conditions thereto as approved by the Planning Commission.

- (b) **Fees.** A tracing of the parcel map shall be filed with the Public Works Director. In addition, the subdivider shall deposit with the City the Recorder's fee for recording the parcel map.
- (c) **Form of Parcel Map.** The parcel map shall conform to the provisions of Section 4-4.602 for final maps where applicable. The map shall show the definite location of the parcel or parcels and particularly their relation to surrounding surveys. The location of any remainder of the original parcel shall be shown, but need not be shown as a matter of survey, but only by

reference to the existing record boundaries if such remainder has a gross area of five (5) acres or more.

The parcel map may be compiled from record data when sufficient survey information exists on filed maps to locate and retrace the exterior boundary lines of the parcel map and when the location of at least one (1) of these boundary lines can be established from an existing monument line. In any case, the parcel map may be based upon a field survey made in conformance with the Land Surveyor's Act.

- (d) **Consent by Owner.** The parcel map shall contain a certificate, which shall be signed and acknowledged by all parties having any record title interest in the real property being subdivided, consenting to the preparation and recording of the parcel map. Such signatures shall be in accordance with the provisions of Section 4-4.603(a)(1) of this chapter pertaining to final maps.
- (e) **Dedications.** If dedications of streets, alleys, walkways, easements, public utility easements, or other public ways, or access rights are required by the Planning Commission as conditions of approval of a parcel map, such dedications shall either be shown on and offered by a certificate on the parcel map or made by separate instrument as determined by the Public Works Director . Such certificate or instrument shall be signed by those parties having any record title interest in the real property being subdivided in accordance with the provisions of Section 4-4.603(a)(1) of this chapter pertaining to final maps.
- (f) **Certification by Public Works Director.** Upon receipt of the parcel map, together with the recording fees, and any required improvement security, the Public Works Director shall examine the same to determine whether said map is technically correct and substantially conforms with the tentative parcel map and with all changes and requirements imposed as conditions of approval by the Planning Commission. The Public Works Director shall also refer the parcel map to the Secretary of the Planning Commission for examination and determination if all of the lots and parcels created by said map conform with the requirements and the zoning regulations of the City of Modesto. If the Public Works Director shall determine that the parcel map fully conforms with all of the requirements set forth herein, he/she shall so certify on said map.
- (g) **Acceptance of Dedications.** Offers of dedication as set forth in subsection (e) of this section shall be reviewed by the Public Works Director for compliance with the conditions of approval imposed by the

Planning Commission. If all offers of dedication are in accordance with the requirements of the Planning Commission, the Public Works Director shall consent to such dedications and shall accept such dedications by a certificate on the parcel map.

- (h) **Recordation of Parcel Maps.** Upon certification by the Public Works Director, the parcel map shall be transmitted to the City Clerk, who shall cause said map to be recorded in the office of the County Recorder.

#### **4-4.509. NOTICE.**

The Public Works Director shall give at least thirty (30) days' notice in writing to the owner(s) of said parcel(s) to construct said improvements. Said notice shall set forth the location of the parcel, the improvements to be constructed, and the number of the resolution approving the parcel map and the volume and page at which the parcel map is recorded in the Stanislaus County Records. Said notice shall be deemed to have been delivered five (5) days after deposit in the United States mail.

#### **4-4.510. FAILURE TO COMMENCE WORK.**

Whenever the required construction is not commenced within thirty (30) days after delivery of notice or within any period of extension granted pursuant to this article, the City Council may authorize the Public Works Director to have said improvements constructed.

#### **4-4.511. EXTENSION OF TIME TO PERFORM WORK.**

Upon receipt of an application from the person required to construct said improvements and an agreement by such person that he/she will comply with the requirements if allowed additional time, the Public Works Director may, in his/her discretion, grant an extension of time, not to exceed an additional one hundred twenty (120) days, within which to complete said improvements.

#### **4-4.513. PROCEDURE.**

When any work is to be done pursuant to this article, the Public Works Director shall cause the work to be accomplished by City personnel or by contract. Plans and specifications therefor may be prepared by the Public Works Director, or he/she may employ such architectural and engineering assistance on a contract basis as he/she may deem reasonably necessary.

**4-4.515. ACCOUNT OF EXPENSES, FILING OF REPORT: CONTENTS.**

The Public Works Director shall keep an itemized account of the expenses incurred by the City in the construction of any improvements done pursuant to the provisions of this article. Upon the completion of the work, the Public Works Director shall prepare and file with the City Clerk a report specifying the work done, the itemized and total cost of the work, a description of the location and type of improvements, and the names and addresses of the persons entitled to notice.

**4-4.516. REPORT TRANSMITTED TO COUNCIL, SET FOR HEARING.**

Upon receipt of said report, the City Clerk shall present it to the City Council for consideration. The City Council shall fix a time, date and place for hearing said report, and any protests or objections thereto. The City Clerk shall cause notice of said hearing to be posted upon the property involved, published once in a newspaper of general circulation in the City, and served by certified mail, postage prepaid, addressed to the owner of the property as his/her name and address appears on the last equalized assessment roll of the county, if such so appear, or as known to the Clerk. Such notice shall be given at least ten (10) days prior to the date set for hearing and shall specify the day, hour, and place when the Council will hear and pass upon the Public Works Director's report, together with any objections or protests which may be filed as hereinafter provided by any person interested in or affected by the proposed charge.

**4-4.517. PROTESTS AND OBJECTIONS, HOW MADE.**

Any person interested in or affected by the proposed charge may file written protests or objections with the City Clerk at any time prior to the time set for the hearing on the report of the Public Works Director. Each such protest or objection must contain a description of the property in which the signer thereof is interested and the grounds of such protest or objection. The City Clerk shall endorse on every such protest or objection the date it was received and shall present such protests or objections to the City Council at the time set for the hearing.

**4-4.518. HEARING OF PROTESTS.**

Upon the day and hour fixed for the hearing the City Council shall hear and pass upon the report of the Public Works Director together with any such objections or protests. The Council may make such revision, correction or modification in the report or the charge as it may deem just; and when the Council is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or

modified) together with the charge, shall be confirmed or rejected. The decision of the City Council on the report and the charge, and on all protests or objections, shall be final and conclusive.

#### **4-4.601. FILING.**

(a) (1) **Filing Within Twenty-Four Months of Tentative Approval.**

The subdivider or his/her agent may file a final map within twenty-four (24) months after the approval or conditional approval of the tentative map. A map shall be deemed to be filed when it is accepted by the City as being in compliance with the provisions of this chapter and in substantial compliance with the tentative map. The twenty-four (24) month period shall not include any days during which the final map is being reviewed by the City. Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the Planning Commission may extend the time for filing a final map for a period or periods not exceeding three (3) years if it determines that conditions affecting the subdivision have not substantially changed. In any case where a final map has not been filed within twenty-four (24) months or such extended period of time as may be granted by the Planning Commission, approval of a new tentative map shall be required.

If a subdivider's application for an extension of time for filing a final map is denied by the Planning Commission, the subdivider may appeal to the City Council within fifteen (15) days after the Planning Commission has denied the time extension. The City Council shall hear such appeal in accordance with the provisions of Section 4-4.404(f) of this chapter. *Effective until July 11, 2002 and after July 10, 2003.*

(2) **Filing Within Twenty-Four Months of Tentative Approval.**

The subdivider or his/her agent may file a final map within twenty-four (24) months after the approval or conditional approval of the tentative map. A map shall be deemed to be filed when it is accepted by the City as being in compliance with the provisions of this chapter and in substantial compliance with the tentative map. The twenty-four (24) month period shall not include any days during which the final map is being reviewed by the City. Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the City Council may extend the time for filing a final map for a period or periods

not exceeding three (3) years if it determines that conditions affecting the subdivision have not substantially changed. In any case where a final map has not been filed within twenty-four (24) months or such extended period of time as may be granted by the City Council, approval of a new tentative map shall be required. *This subsection 4-4.601(a)(2) shall remain in effect and shall supersede subsection 4-4.601(a)(1) only until July 10, 2003, and as of that date is repealed unless extended or amended by a later enacted ordinance.*

- (b) **Fees.** A tracing of the final map shall be filed with the Public Works Director. The subdivider shall deposit with the City the County Recorder's fee for recording the final map and shall pay to the City the fees for checking the map. The subdivider shall also pay at that time all other fees required by law to be paid in connection with the approval of a subdivision.
- (c) **Filing of Traverse Sheets.** At the time of the filing of final map with the Public Works Director, the subdivider shall also file therewith traverse sheets showing traverse closures and the computation of all distances, angles, and course shown on the final map. The traverse of the boundaries of the tract and of lots and blocks shall close within a limit of error of one (1) in ten thousand (10,000).
- (d) **Report and Guarantee of Clear Title.** The final map shall be accompanied by a report prepared by a duly authorized title company naming the persons whose consent is necessary to the preparation and recordation of said map and to the dedication of the streets, alleys, and other public places shown on the map and certifying that as of the date of the preparation of the report, the persons therein named are all the persons necessary to give clear title to said subdivision. At the time of recording the approved map, there shall be filed with the County Recorder a guarantee executed by a duly authorized title company for the benefit and protection of the City showing that persons (naming them) consenting to the preparation and recordation of said map and offering for dedication the streets, alleys and other public places shown thereon are all the persons necessary to pass clear title to said subdivision and to the dedication shown thereon.

#### 4-4.602. FORM OF FINAL MAP.

(a) **Legibility and Size.**

- (1) The final map shall be clearly and legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film, except that affidavits, certificates and acknowledgments may be legibly stamped or printed upon the map with black opaque ink. The map shall be so made and shall be in such condition when filed that good legible prints and negatives can be made therefrom. The size of each sheet shall be eighteen (18) by twenty-six (26) inches leaving an entirely blank margin of one (1) inch.
- (2) When the final map consists of more than two (2) sheets, a key map showing the relation of the sheets shall be placed on sheet one. Every sheet comprising the map shall bear the scale, north point, legend, sheet number and number of sheets comprising the map.

(b) **Title.** The final map shall contain a title consisting of the name of the tract and subtitle or general description of all the property being subdivided with reference to maps which have been previously recorded. In no case shall the title be the same, or so nearly the same as to cause confusion as a name of any existing city, town, tract or subdivision of land of which a map has been previously recorded.

(c) **Distances and Bearings.** Sufficient data must be shown to determine readily the bearing and length of every lot line, block line and boundary line. Dimensions of lots shall be given as total dimensions, corner to corner, and shall be shown in feet and hundredths of a foot. Lots containing one (1) acre or more shall show total acreage to nearest hundredth. Bearing and length of straight lines, and radii and arc length for all curves as may be necessary to determine the location of the centers of curves and tangent points shall be shown.

(d) **Boundary References and Monuments.**

- (1) The final map shall show clearly any stakes, monuments or other evidence found on the ground to determine the boundaries of the tract. The corners of adjoining subdivisions or portions thereof shall be identified by lot and block numbers, subdivision and properties shown.

- (2) Whenever the Public Works Director has established the center line of a street or alley, adjacent to or in the proposed subdivision, the data shall be shown in the final map indicating all monuments found and making reference to a field book or map. If the points were reset by ties the course and detail of relocation data used shall be stated.
  - (3) The map shall show the location and description of all monuments and bench marks found or placed in making the survey of the subdivision with proper reference sufficient for relocation.
- (e) **Information Required.** In addition, the final map shall be prepared in full compliance with the following requirements:
- (1) **High Water Line.** The line of high water shall be shown in any case where the subdivision is adjacent to a stream, channel or any body of water.
  - (2) **Flood Areas.** The boundaries of any areas within the proposed subdivision which are subject to inundation by water shall be shown.
  - (3) **Boundary of Subdivision.** The boundary of the subdivision shall be designated by a blue border one-eighth (1/8) inch in width applied to the reverse side of the tracings. Such border shall not interfere with the legibility of figures or other data.
  - (4) **Right of Way Dimensions.** The center lines and said lines of all streets, the total width of all streets, the widths each side of the center line, the widths of any portion of a street being dedicated, and the widths of existing dedications, and the widths of all railroad, Irrigation District or other rights of way shall be shown.
  - (5) **Easements.** The map shall show the side lines of all easements to which the lots are subject. Such easements must be clearly labeled and identified and if already of record, the record references given. If any easement is not definitely located of record, a statement of such easement must appear on the title sheet. Easements for storm drain, sewers and other purposes shall be denoted by the fine broken lines. The width of the easement and the lengths and bearings of the lines thereof and sufficient ties thereto definitely locate the easement with respect to the subdivision must be shown.

If the easement is being dedicated by the map, it shall be properly referenced in the owner's certificate of dedication.

- (6) Acreage. The total acreage of the subdivision to the nearest one hundredth of an acre shall be shown on the face of the final map.
- (7) Block Numbers. Block numbers shall be assigned by the office of the Planning Commission. The numbers shall be solid and of sufficient size and thickness to stand out, and shall be so placed as not to obliterate any figure and shall not be enclosed in any design. Each block in its entirety shall be shown on one (1) sheet. Where adjoining blocks appear on separate sheets, the street adjoining both blocks shall be shown on both sheets complete with center line and property line data.
- (8) Lot Numbers. Lot numbers shall begin with the number "1" in each block and shall be consecutive with no omissions or duplications. If deemed necessary by the Secretary of the Planning Commission, omissions may be made when only a portion of the block is to be recorded and the remainder of the block is to be completed as part of a subsequent subdivision.
- (9) Other Data. The map shall also show all other data that is or may be required by law.
- (10) Disposition of Lots. The final map shall particularly define, delineate and designate all lots intended for sale or reserved for private purposes, all parcels offered for dedication for any purpose, public or private with all dimensions, boundaries and courses clearly shown and defined in every case.
- (11) Reversion to Acreage. Maps filed for the purpose of reverting subdivided land to acreage shall be conspicuously so designated under the title "The Purpose of This Map is a Reversion to Acreage."

#### **4-4.603. CERTIFICATES AND TAX BOND.**

- (a) The following certificates and acknowledgments and others required by law shall appear on the final map; such certificates may be combined where appropriate.

- (1) **Certificate by Parties Holding Title.** A certificate signed and acknowledged by all parties having any title interest in the land subdivided, consenting to the preparation and recordation of said map, provided however, that the signatures of parties owning the following types of interests may be omitted if their names and the nature of their interests are set forth on the map.
- (i) Rights-of-way, easements or other interest which cannot ripen into a fee, except those owned by a public entity or public utility unless it is determined by the City Council that division and development of the property in the manner set forth on the final map will not unreasonably interfere with the free and complete exercise of the public entity or public utility right-of-way or easement; provided that such signatures may be required by the City Council. If such signatures are not required by the City Council, the subdivider shall send, by certified mail, a sketch of the proposed final map, together with a copy of this section, to any public entity or public utility which has previously acquired a right-of-way or easement. If the public entity or public utility objects to recording the final map without the signature of each public entity or public utility, it shall so notify the subdivider and within thirty (30) days after receipt thereof, otherwise the signature may be omitted. Failure of the public entity or public utility to object to recording the final map without its signature shall in no way affect its rights under a right-of-way easement.
  - (ii) Rights-of-way, easements or reversions, which by reason of changed conditions, long disuse or laches appear to be no longer of practical use or value and which signature it is impossible or impractical to obtain. In this case, a reasonable statement of the circumstances preventing the procurement of the signature shall be set forth on the map.
  - (iii) Any subdivision map including land originally patented by the United States or this State, under patent reserving interest to either or both of these entities, may be recorded under the provisions of this article without the consent of the United States or of this State thereto, or to dedication made thereon.

- (iv) Interest in or rights to minerals including but not limited to oil, gas or other hydrocarbon substances, if
  - (A) The ownership of such interests or rights does not include a right of entry on the surface of the land; or,
  - (B) The use of the land, or the surface thereof, in connection with the ownership of such interests or rights, is prohibited by zoning or other local ordinances or regulations, provided that such signatures may be required by the City Council.
  
- (2) **Dedication Certificate.** A certificate signed and acknowledged as above offering for dedication all parcels of land shown on the final map and intended for any public use, except those parcels other than streets which are intended for the exclusive use of the lot owners in the subdivision, their licensees, visitors, tenants and servants.
  
- (3) **Engineer's Certificate.** A certificate by the civil engineer or licensed surveyor responsible for the survey and final map. The signature of such civil engineer or surveyor, unless accompanied by his/her seal, must be attested.
  
- (4) **Certificates for execution by each of the following:**
  - (i) Public Works Director,
  - (ii) Secretary of the Planning Commission,
  - (iii) City Clerk,
  - (iv) County Recorder;
  
- (5) **Certificates Regarding Tax Liens.**
  - (i) Prior to the filing of the final map with the governing body, the subdivider shall file with the Clerk of the Board of Supervisors of Stanislaus County, a certificate from the official, computing redemptions in the County or any municipal corporation in which any part of the subdivision is located, showing that, according to the records of his/her office, there are no liens against the subdivision or any part thereof for unpaid State, County, municipal or local taxes

or special assessments collected as taxes, except taxes or special assessments not yet payable.

- (ii) As to taxes or special assessments collected as taxes not yet payable, the subdivider shall file with the Clerk of the Board of Supervisors mentioned, a certificate by each proper officer giving the Clerk's estimate of the amount of taxes and assessments which are a lien but which are not yet payable.
- (iii) Whenever any part of the subdivision is subject to lien for taxes or special assessments collected as taxes which are not yet payable, the final map shall not be recorded until the owner or subdivider executes and files with the Board of Supervisors, a good and sufficient bond to be approved by said Board and by its terms made to inure to the benefit of the County and conditioned upon the payment of all State, County, municipal and local taxes and all special assessments collected as taxes, which at the time the final map is recorded are a lien against the property, but which are not yet payable. In lieu of a bond, a deposit may be made of money or negotiable bonds in the same amount, and of the kind approved for securing deposits of public money.

#### **4-4.604. ACTION ON FINAL MAP.**

- (a) **Approval of Planning Commission.** The Secretary of the Planning Commission upon receiving the final map from the subdivider or his/her agent shall examine the same to determine whether said map conforms with the tentative map and with all changes and requirements imposed as a condition to the acceptance of said tentative map by the Planning Commission. If it is determined that the final map does not conform, the subdivider shall be advised of the changes or additions that must be made before the final map can be certified by the Secretary of the Planning Commission. If the subdivider is not satisfied with the determination made by the Secretary of the Planning Commission, he/she may appeal in writing, within fifteen (15) days, to the Planning Commission. If it is determined that the map is in conformity, the Secretary of the Planning Commission shall certify approval thereon.
- (b) **Approval by Public Works Director.** Upon approval by the Secretary of the Planning Commission, the final map and other data shall be submitted

to the Public Works Director, who shall examine and determine that the subdivision as shown is substantially the same as it appeared on the tentative map, and any improved alterations thereof, that all provisions of the law and of this chapter applicable at the time of approval of the tentative map have been complied with, and that he/she is satisfied that the map is technically correct. If the Public Works Director shall determine that full conformity therewith has been made, he/she shall so certify on said map. In the event a subdivision is partly in the City and partly outside the City, the County Surveyor and the Public Works Director shall enter into an agreement by and with the consent of their respective governing bodies, providing that the County Surveyor may perform the duties of the Public Works Director or vice versa, or providing for an apportionment between them of said duties. The County Surveyor or the Public Works Director, when by such agreement all such duties devolve upon either one, may after his/her performance thereof make the aforesaid certification upon said map and, when by such agreement said duties are apportioned between the County Surveyor and Public Works Director, it shall be sufficient, if each shall, after the performance thereof, make a certification on said map, touching the duties performed by each. When all certificates required on the final map have been signed, except the approval certificate of the Council, the Public Works Director shall transmit said map to the City Clerk.

**(c) Approval by City Council.**

- (1) At its first regular meeting following the transmittal of the final map to the City Clerk, the Council shall consider said map, the plan of subdivision, and the offers of dedication. The Council may reject any or all offers of dedication. In the event that all improvements required or conditions imposed upon approval under the terms of this chapter or by law are not completed before the filing of the final map, the Council may enter into an agreement with the subdivider for posting improvement security as provided in Section 4-4.605 of this article. In such case, when the agreement has been approved by the City Attorney as to form and by the Public Works Director as to sufficiency, and when the improvement security has been approved by the City Attorney as to form and by the Finance Director as to sufficiency, the Council may consider the final map.
- (2) The Council shall approve said map if it is determined to be in conformity with the provisions of law and of this article. The Council shall disapprove said map if it is determined to be not in

conformity with the provisions of law and of this chapter and shall advise the subdivider of its disapproval, and the reason or reasons therefor.

- (d) **Action by City Clerk.** The City Clerk upon receipt of the necessary fees, and after the signatures and seals have been affixed and upon the approval of the final map by the Council shall transmit the map to the County Recorder who shall file the same. No map shall have any force or effect until the same has been approved by the Council, and no title to any property described in any offer of dedication shall pass until recordation of the final map.

#### **4-4.605. AGREEMENT AND SECURITY FOR IMPROVEMENT.**

- (a) **Provisions of Agreement.**

- (1) Prior to the approval by the Council of the final map, the subdivider shall execute and file an agreement between himself and the City, specifying the period within which he/she shall complete all improvement work to the satisfaction of the Public Works Director or designee, and providing that if he/she shall fail to complete such work within such period, the City may complete the same and recover the full cost and expense thereof from the subdivider. The agreement shall also provide for inspection of all improvements by the Public Works Director or designee, and reimbursement of the City by the subdivider for the cost of such inspection. The agreement shall also provide that the subdivider shall guarantee and warrant subdivision improvements for a period of one (1) year following the completion and acceptance thereof against any defective work or labor done, or any defective materials furnished.
- (2) Such agreement may also provide:
  - (i) For the construction of the improvements in units.
  - (ii) For extension of time under conditions therein specified.
  - (iii) For partial release of the improvement securities upon acceptance by the City Council of the work as it progresses.
  - (iv) For the financing and construction of any or all of such improvements under an appropriate special assessment act

proceeding, the subdivider shall agree, in writing, to initiate, and so far as may be in his/her power, to consummate such proceedings, within such time as may be prescribed by the Council.

- (b) **Improvement Security.** The subdivider shall also file with the aforesaid agreement, two (2) improvement securities, each to be in an amount based upon the total estimated cost of the improvement as determined by the Public Works Director. One (1) improvement security shall secure faithful performance of said agreement and shall be in an amount equal to one hundred (100) percent of the estimated cost of the improvement. The second improvement security shall secure the obligations set forth in subsection (b) of Section 66499.2 of the Government Code, for payment of the contractor, his/her subcontractors and to persons renting equipment or furnishing labor or materials to them for said improvements, and shall be in an amount equal to fifty (50) percent of the total estimated cost of the improvements. Such improvement securities shall be in one (1) of the following forms:

- (1) A cash deposit or deposits.
- (2) A bond or bonds issued by one (1) or more duly authorized corporate sureties.
- (3) A savings and loan certificate and share in accordance with Article 6 of Chapter 4 of Title 2 of this Code.
- (4) An instrument or instruments of credit from one (1) or more financial institutions subject to regulations by the state or federal government pledging that the funds necessary to meet the performance are on deposit and guaranteed for payments and agreeing that the funds designated by the instrument shall become trust funds for the purposes set forth in the instrument.
- (5) Any other form of improvement security authorized by the Subdivision Map Act, including the deposit, with a responsible escrow agent or trust company approved by the Council, of money or negotiable bonds of the kind approved for securing deposits of public money.

The required security shall be in an amount determined by the Public Works Director as sufficient to cover the cost of said improvements, engineering, inspection, fees and incidental expenses. The required

improvement security shall be approved by the Finance Director as to sufficiency and by the City Attorney as to form.

- (c) **Forfeiture of Improvement Security.** In the event the subdivider shall fail to complete all improvement work in accordance with the provisions of this chapter and the City shall have to complete same, or if the subdivider shall fail to reimburse the City for the cost of inspection, engineering, fees and incidental expenses, the City shall call on the surety for reimbursement, or shall appropriate from any cash deposits, savings and loan certificates and shares, or instruments of credit, funds for reimbursement. In any case, if the amount of the surety bond, savings and loan certificate and shares, instrument or credit, or cash deposit shall exceed all cost and expenses incurred by the City it shall release the remainder of such bond, savings and loan certificate and share of cash deposit. If the amount of the surety bond, savings and loan certificate and share, instrument of credit, or cash deposit shall be less than the cost and expense incurred by the City, the subdivider shall be liable to the City for such difference.
- (d) **Release of Improvement Security.** Improvement securities may be released or reduced, in whole or in part, only in the time and manner prescribed in Section 66499.7 of the Government Code, as it now exists or is hereafter amended, and only after certification by the Public Works Director that the work covered thereby has been satisfactorily completed and upon approval of the Council.
- (e) **Guarantee and Warranty Security.** In addition to the improvement securities specified in subsection (b) of this section, the subdivider shall file with the subdivision agreement an amount as specified in said agreement to guarantee and warrant subdivision improvements for a period of one (1) year following the completion and acceptance thereof against any defective work or labor done, or defective materials furnished. The Public Works Director is authorized to release said security upon expiration of the guarantee and warranty period if it is determined that subdivision improvements so guaranteed and warranted are satisfactory.

#### **4-4.801. STANDARDS AND APPROVAL.**

All improvements shall conform to the requirements contained in the Standard Specifications of the City of Modesto prepared by the Public Works Director, recommended by the Planning Commission, and adopted by the Council as the same now exists or may hereafter be amended. Copies of said Standard

Specifications shall be maintained on file in the office of the City Clerk, Planning Commission and Public Works Director.

#### **4-4.802. GENERAL REQUIREMENTS.**

The subdivider shall install improvements in accordance with the standards specified in this chapter and in the Standard Specifications referred to in Section 4-4.801 hereof.

- (a) **Streets and Alleys.** All streets and alleys shall be improved in accordance with the requirements of the Standard Specifications referred to in Section 4-4.801 hereof.
- (b) **Drainage Facilities.** Drainage facilities shall be installed as deemed necessary by the Public Works Director to provide for the removal of surface water. Such drainage facilities shall be of a character and design approved by the Public Works Director and in accordance with the requirements of the Standard Specifications referred to in Section 4-4.801 hereof, in order to insure proper grading and erosion control including the prevention of sedimentation or damage to off-site property.
- (c) **Curbs and Gutters.** Curbs and gutters shall be installed to grades, cross section, layout and location approval by the Public Works Director.
- (d) **Sidewalks.** Sidewalks shall be installed along all streets and may be required in other locations where sidewalks are deemed necessary by the Planning Commission.
- (e) **Sewage Disposal.** Sanitary sewer facilities connecting with the existing City system shall be installed to serve each lot when connection to such system is available. Sewers shall be installed to grades, location, design and sizes approved by the Public Works Director in accordance with the provisions of applicable laws of the City.
- (f) **Water.** Water mains connecting with the existing City or public utility system shall be installed to serve each lot when connection to such system is available. In the latter case, when it is proposed that water will be supplied by a private water company, the subdivider shall submit a letter from the governing body of such water system showing the ability of the system to serve the proposed subdivision and evidence that a satisfactory agreement has been entered into for connection to the system. Water mains shall then be installed to grades, location, design and sizes approved

by the Public Works Director and the engineer of the governing body of the water system.

- (g) **Street Lights.** Street lighting standards, underground cables or conduit and conductors and all materials and appurtenances necessary shall be installed of a design and location approved by the Public Works Director. There shall be at least one (1) electrolier at each intersection, and intermediate electroliers not more than three hundred thirty (330) feet apart in blocks exceeding three hundred thirty (330) feet in length. Electroliers shall be spaced not more than three hundred thirty (330) feet apart on both sides of major streets.

When a cul-de-sac is longer than one hundred fifty (150) feet measured from the center of the turnaround at the end of the cul-de-sac to the center line of the intersecting street, an electrolier shall be provided at the turnaround in a location approved by the Public Works Director.

- (h) **Railroad Crossings.** Provisions shall be made for any and all railroad crossings necessary to provide access to or circulation within the proposed subdivision, including the preparation of all documents necessary for application to the California State Public Utilities Commission for the establishment and improvement of such crossing. The cost of such railroad crossing improvement shall be borne by the subdivider.
- (i) **Street Signs.** Each subdivider shall pay to the City a fee for each street sign required in the subdivision at the time of approval of the final map, as a condition of said approval; provided, that when only a part of an intersection requiring a street sign is within or contiguous to the subdivision, the charge for said street sign for such an intersection shall be proportional to the number of corners of the intersection within or contiguous to the subdivision. Said fee shall be in accordance with a schedule approved by the Council from time to time by resolution.

#### **4-4.802.1. REIMBURSEMENT FOR IMPROVEMENTS.**

- (a) Improvements shall be dedicated to the public and have sufficient size, capacity and number to provide for orderly development both of the property being subdivided and for adjacent areas. The size, capacity and number of improvements shall be determined by the Public Works Director. The City will reimburse the subdivider that portion of the cost of improvements equal to the difference between the amount it would cost the subdivider to install improvements to serve only the subdivision and the actual cost of such improvements. The reimbursement shall be

provided in accordance with provisions of the Subdivision Map Act. The City may enter into an agreement with the subdivider to specify the details of the reimbursement procedure. Interest will not be paid to the subdivider.

- (b) To pay for the reimbursement required hereby, the City may:
  - (1) Collect a reasonable charge from other persons, including public agencies, using such improvements for the benefit of the real property not within the subdivision.
  - (2) Contribute to the subdivider that part of the cost of improvements that is attributable to the benefit of real property outside the subdivision and levy a charge upon real property benefited to reimburse the City for such costs.
  - (3) Establish and maintain local benefit districts for the levy and collection of such charge or cost from property benefited.

#### **4-4.804. MONUMENTS.**

- (a) At the time of making the survey for the final map, the engineer or surveyor shall set sufficient durable monuments to conform with the standards described in Section 8771 of the Business and Profession Code so that another engineer or surveyor may readily retrace the survey.
- (b) Permanent monuments as required by the Standard Specifications of the City of Modesto shall be set at each corner and angle point in the exterior boundaries of the subdivision except where such monuments already exist in the proper positions. The exterior boundary of the subdivision shall be adequately monumented or referenced before the final map is recorded.
- (c) Interior monuments shall be set as required by the Standard Specifications of the City of Modesto. Interior monuments need not be set at the time the map is recorded, if the engineer or surveyor certifies on the map that the monuments will be set on or before a specified later date, and if the subdivider furnishes to the City a cash deposit in an amount for each monument to be set as established by resolution of the City Council adopted from time to time.
- (d) Within five (5) days after the final setting of all monuments has been completed by the engineer or surveyor, he/she shall give written notice to

the subdivider, and to the Public Works Director, that the final monuments have been set.

Upon payment to the engineer or surveyor for setting the final monuments, the subdivider shall present to the Public Works Director evidence of such payment and receipt thereof by the engineer or surveyor. Upon receipt of such evidence the Public Works Director is authorized to release the cash deposit. The Public Works Director is authorized to cause payment to be made to the engineer or surveyor for the setting of the final monuments from said cash deposit, if so requested by the depositor.

If the subdivider does not present evidence to the Public Works Director that he/she has paid the engineer or surveyor for the setting of the final monuments, and if the engineer or surveyor notifies the Public Works Director that he/she has not been paid by the subdivider for the setting of the final monuments, the Public Works Director may, within three (3) months from the date of said notification, authorize payment to the engineer or surveyor from the cash deposit the amount due.

SECTION 4. AMENDMENT OF CODE: Sections 4-5.03, 4-5.05 and 4-5.06 of Chapter 5 of Title 4 of the Modesto Municipal Code are hereby amended to read as follows:

**4-5.03. EXCEPTIONS.**

The provisions of Section 4-5.01 herein, shall not apply to cases where lumber or other building material or building appliances are placed in such street or alley for the purpose of erecting, altering or repairing any building or structure located upon adjoining property; provided, however, that in such cases material or appliances shall be so placed as to offer the least possible obstruction to the free passage of such street or alley; and provided further, that any such material or appliances shall be placed or stored as directed by the Public Works Director of the City.

**4.5.05. SAFEGUARDS REQUIRED FOR NECESSARY OBSTRUCTIONS.**

Whenever it becomes necessary for any reason, temporarily to place, or cause to be placed, upon any street or sidewalk in the City, any obstruction whatever, which obstructs the use of said street or sidewalk, or when it becomes necessary to make any excavation in any street or sidewalk, the person placing such obstruction, or making such excavation, or causing the same to be made in or upon such street or sidewalk in the City, shall, during the time such obstruction exists, maintain at such obstruction, such safeguards as may be ordered by the

Public Works Director of the City, and said person shall, during the time such obstruction exists, cause to be maintained one (1) or more lighted lanterns showing a red light, hung on each side of said obstruction so as to indicate the location of same, and to give warning to the existence of said obstruction. Said light must be placed and maintained from the hour of 5:30 p.m. to 6:30 a.m. of each day during the months of November, December, January and February, and during the months of March, April, May, June, July, August, September and October from the hour of 6:30 p.m. to 5:30 a.m. of the following day.

#### **4-5.06. DUTY AND AUTHORITY OF PUBLIC WORKS DIRECTOR TO PLACE LIGHTS AT OBSTRUCTIONS.**

The Public Works Director of the City shall have the authority place to, and it is hereby made his/her duty to see that sufficient lights are placed at any obstruction.

SECTION 5. AMENDMENT OF CODE: Section 4-6.101, 4-6.201, 4-6.202, 4-6.203, 4-6.204, 4-6.206, 4-6.207, 4-6.208, 4-6.209, 4-6.210, 4-6.301, 4-6.303, 4-6.306, 4-6.402, 4-6.501, 4-6.502, 4-6.503, 4-6.504, 4-6.801, and 4-6.901 of Chapter 6 of Title 4 of the Modesto Municipal Code are hereby amended to read as follows:

#### **4-6.101. DEFINITIONS.**

Unless otherwise expressly stated, whenever used in this chapter, the following terms shall respectively be deemed to mean:

- (a) **Street.** Any place commonly used for the purpose of public travel.
- (b) **Owner.** Every person having use or control of any taxicab, as herein defined, whether as owner, lessee or otherwise.
- (c) **Driver.** Every person in charge of operating any taxicab, as herein defined, either as agent, employee or otherwise, of owner, as owner, or under the direction of the owner, as herein defined.
- (d) **Taximeter.** Any mechanical instrument, appliance, device, or machine, by which the charge for hire of a taxicab is mechanically or electronically calculated either for distance traveled or time consumed, or both, and upon which instrument, appliance, device, or machine such charge is indicated by figures.

- (e) **Taxicab.** Every automobile or motor-propelled vehicle of a distinctive color or colors, such as is in common usage in this country for taxicabs, and/or operated at rates per mile, or for waiting time, or for both, and equipped with a taximeter, used for the transportation of passengers for hire over public streets of the City and not over a defined route and irrespective of whether the operations extend beyond the boundary limit of the said City, and such vehicle is routed under the direction of such passenger.
- (f) **Taxistand.** Means a place on a public street designated by the Public Works Director for the use, while awaiting employment, of any taxicab covered by this chapter.

#### **4-6.201. APPLICATION REQUIRED.**

No person shall engage in the business of operating any taxicab within the City without first having submitted a taxicab operation application, and having received approval to operate a taxicab company by the Public Works Director.

#### **4-6.202. APPLICATION TO OPERATE A TAXICAB BUSINESS.**

All persons applying to the City to operate a taxicab business for one or more taxicabs shall submit a written application to the Public Works Director. Said application shall include the following information:

- (a) Name, business, residence and telephone number of all applicant(s) and owner(s) of the business. Also, include any felonies and drug convictions, if any.
- (b) The fictitious name, if any, under which said applicant does business and proposes to do business. Said fictitious name shall not duplicate, nor appear to duplicate the name of any other taxicab company doing business in the City. The Public Works Director will be the City approval authority for taxicab company names.
- (c) The number of taxicabs the applicant proposes to operate in the City.
- (d) The type, age and condition of each taxicab proposed to be operated by the applicant, stating the make, year of manufacture and passenger carrying capacity.
- (e) The make and type of taximeter intended to be installed on each taxicab for which application is made.

- (f) A description of the proposed color scheme, and any other distinguishing characteristics of the proposed taxicab design. Color scheme and design shall not duplicate nor appear to duplicate that of any other taxicab company authorized to do business in the City. The Public Works Director will be the City approval authority for all taxicab color schemes.
- (g) The experience of the applicant in the taxicab business. A proposed business plan demonstrating the applicant's ability to initiate and stay in business is strongly encouraged.
- (h) Proposed efforts to provide services and vehicles to support persons with disabilities. Where possible, taxicab companies are encouraged to provide vehicles that can accommodate "common wheelchairs" as determined by the Americans with Disabilities Act (ADA).
- (i) Any other information the applicant believes pertinent to their operation of a taxicab company in the City.

**4-6.203. ISSUANCE OF PERMITS.**

- (a) Following approval by the Public Works Director, and documentation that the applicant meets all other requirements listed in this chapter, individual vehicle permits shall be issued to operate a taxicab business in the City.
- (b) Permit(s) for vehicles not placed into service within one (1) year of the official City notice will be canceled. After cancellation, requests for new or additional permits must complete the application process described in Section 4-6.201.

**4-6.204. POSTING OF TAXICAB PERMITS.**

Each taxicab operator to whom individual taxicab permits have been issued shall cause an authenticated copy of the permit to be posted on the dash in a position clearly visible to the passenger in the taxicab, or in some other conspicuous area approved by the Public Works Director.

**4-6.206. TRANSFER OF PERMITS.**

No taxicab permit may be sold, assigned, mortgaged or otherwise transferred without the consent of the Public Works Director. The Public Works Director may grant or deny, or impose such conditions with respect to the transfer of permits as he/she deems to be in the best interest of the public safety and general welfare.

#### **4-6.207. REPLACEMENT OF TAXICABS.**

Whenever an owner sells or transfers title to a taxicab for which a permit has been granted and purchases another taxicab, the Public Works Director, as a matter of right, upon written request of the applicant, shall issue a new permit for the operation of such replacement taxicab, provided the owner has complied with all provisions of this chapter. No replacement taxicab shall be put into operation before a permit covering its operation has been obtained as required by this chapter.

#### **4-6.208. REVOCATION OF PERMITS.**

The permit to operate a taxicab company may be revoked by the Public Works Director at any time after proper notice to and opportunity to respond is given to the owner thereof if:

- (a) The owner fails to operate the taxicab in accordance with the provisions of this chapter.
- (b) The owner attempts to return to business after a cessation of business greater than thirty (30) days without first having obtained permission from the Public Works Director.
- (c) The taxicabs are operated at a rate of fare other than that approved by the City Council.
- (d) The owner fails to pay any of the fees required to be paid by him/her by the provisions of this chapter or any other chapter in this Code.
- (e) The owner attempts to operate taxicabs previously determined to be unsafe.

#### **4-6.209. SURRENDER OF PERMITS.**

A permit canceled or revoked by the Public Works Director shall forthwith be surrendered, and the operations of any taxicab company covered by such a permit shall immediately cease further operations. Any owner who shall permanently retire any taxicab(s) from service and within ten (10) days thereof not replace said taxicab(s) or make arrangements satisfactory to the Public Works Director for said replacement, shall immediately surrender any permit granted for the operation of such taxicab to the Public Works Director. A taxicab company owner may not secure a new permit for the operation of any taxicab company for which a permit

has been canceled, revoked or surrendered without having first made application therefor in a manner provided in this article.

#### **4-6.210. ADDITIONAL TAXICABS.**

Any owner authorized to operate a taxicab company in the City, desiring additional permits shall formally request in writing to and with the approval of the Public Works Director.

#### **4-6.301. TAXIMETER REQUIRED.**

It is unlawful for any taxicab company to operate in the City unless and until such taxicab is equipped with a taximeter of a design that has been approved by the Public Works Director. No passenger shall be carried in any such taxicab within the City limits unless such taximeter is in operation.

#### **4-6.303. INSPECTION OF TAXIMETER.**

Every taximeter used in the operation of taxicabs shall be subject to inspection at anytime by the Public Works Director or his/her representative. Upon discovery of any inaccuracy of such taximeter, the operator thereof shall remove, or cause to be removed from service any vehicle equipped with such taximeter until such taximeter has been repaired and accurately adjusted. Every taximeter shall be inspected, tested and affixed with a label for accuracy for the current year by "Stanislaus County Weights and Measures" at the carrier's expense. No such label shall be removed except at the time a subsequent inspection is made. Every operator shall provide a copy of the taximeter inspection report to be placed in the operator's file and a copy will be retained in the vehicle for inspection at any time. The date on which such inspection was made shall be stamped in a prominent place. Taximeters placed upon taxicabs to replace broken or faulty meters, shall not be placed into service until they have been approved by the Public Works Director and the Stanislaus County Sealer of Weights and Measures.

#### **4-6.306. POSTING OF FARES.**

Each taxicab operator shall cause to be displayed a card not less than two (2) inches by four (4) inches in size which shall have plainly printed thereon the name of the owner or the fictitious name under which owner operates, the business address, and telephone number of said owner, the rated capacity of the taxicab, and a correct schedule of the rates to be charged for conveyance in said vehicle. Said card shall be conspicuously posted on the rear side window of the taxicab or in some other area approved by the Public Works Director.

#### **4-6.402. NUMBER.**

Each taxicab shall bear a number on the outside of the vehicle at such places and of the type prescribed by the Public Works Director or his/her representative.

#### **4-6.501. INITIAL INSPECTION OF TAXICABS.**

Before a permit is issued to any owner, the taxicab for which such permit is requested shall be delivered to the Public Works Director or his/her representative, who shall inspect such taxicab, its equipment and taximeter to ascertain whether such taxicab complies with the provisions of this chapter. Vehicle inspections will cover, but not be limited to the following items: seat belts, windows (glass), windshield wipers, horn, lights, brakes, emergency brake, belts and hoses, tires, bearings, lug nuts, steering, suspension, shock absorbers, frame, driveline, and conclude with an on-road test drive. Acceptance of each item will be on a pass/fail basis.

#### **4-6.502. TWICE YEARLY INSPECTION OF TAXICABS.**

Following the initial inspection of a taxicab, it shall be inspected twice yearly to ascertain whether such taxicab complies with the provisions of this chapter. It is the responsibility of the taxicab owner to insure that these inspections are accomplished in a timely manner. Any taxicab exceeding seven (7) months since the last City inspection may be immediately removed from operation by the Public Works Director or his/her representative.

#### **4-6.503. RIGHT OF ENTRY.**

The Public Works Director, the Police Chief, or any member of the Public Works Department, or the Police Department, shall have the right at any time after displaying proper identification, to enter into or upon any taxicab permitted to operate in the City for the purpose of ascertaining whether or not any of the provisions of this chapter are being violated.

#### **4-6.504. UNSAFE TAXICABS.**

Any taxicab which is found, after such an inspection, to be unsafe or in any way unsuitable for taxicab service shall be immediately ordered out of service by the Public Works Director or his/her designated representative, and before again being placed in service shall be placed in safe condition and successfully complete the City-provided inspection.

#### **4-6.801. DESIGNATION OF STANDS.**

The Public Works Director is hereby authorized to locate and establish taxicab stands on City streets. Such regulations shall become effective when appropriate signs are placed giving notice of such regulations to the public. The right to use a taxicab stand heretofore or hereafter established for the use of a specific taxicab operator shall be nontransferable.

The number of taxicab stands to which each person operating taxicabs shall be entitled shall be determined by the Public Works Director based on his/her finding as to the need for same in order to adequately serve the public.

The fee to be paid to the City for each taxicab stand heretofore or hereafter established for the use of a taxicab operator shall be as follows:

- (a) There shall be no charge for the first stand;
- (b) For each additional stand there shall be paid to the City a fee of fifteen dollars (\$15.00) per month, payable in advance at the beginning of each month.

#### **4-6.901. INSURANCE.**

It is unlawful for any owner or driver to operate a taxicab unless there is in full force and effect a policy of insurance whereby the owner and driver of each taxicab operated within the City are insured against liability for damage to property and for injury to or death of any person as a result of the ownership, operation or other use thereof.

The taxicab liability policy shall insure to the benefit of any person suffering loss or damage, either to person or property, as provided in this chapter, and the liability of the insurance carrier shall be in no manner abrogated or abated by the death of the tortfeasor and/or the taxicab company owner. The taxicab liability insurance shall be a continuing liability up to the full amount thereof not withstanding any recovery thereon, and the policy shall so certify.

Each taxicab operator shall provide the City Clerk with evidence of insurance coverage in the amount and form as approved by the City's Risk Manager. Such amounts shall be set forth from time to time by resolution of the City Council.

Failure to maintain the minimum levels and standards of required insurance for any time is a violation of this chapter and shall be sufficient grounds for the

immediate suspension, revocation, or nonrenewal of a permit by the Public Works Director or his/her representative.

SECTION 6. AMENDMENT OF CODE: Sections 4-7.1103, and 4-7.1106 of

Article 11 of Chapter 7 of Title 4 of the Modesto Municipal Code are hereby amended to read as follows:

**4-7.1103. PLACEMENT FOR COLLECTION.**

The following regulations shall govern the placement of pruned refuse for collection by the City. Failure to comply with any regulation shall be unlawful and punishable as an infraction.

- (a) **Place.** Persons desiring to have pruned refuse collected by the City shall place it in an abutting alley, if one exists. Where alleys do not exist, pruned refuse shall be placed in the abutting street for collection. During designated leaf season, leaves shall be placed in the abutting street at all locations.
- (b) **Location.** Pruned refuse and leaves during the designated leaf season placed in streets shall not be combined but be placed in separate piles in a compact manner and shall not extend into the street more than four (4) feet, nor shall the closest edge of the pile be placed less than one (1) foot from the face of the curb, or in case no curb exists, from the low point of the gutter, so as to permit drainage. Pruned refuse and leaves will not be collected when obstructed by parked vehicles, overhead obstruction, or not immediately accessible to the collection vehicle. With the exception of leaf season, no power blowers or any other method shall be used to blow or move any nonpruned refuse into the streets at any time. Pruned refuse placed in alleys shall be placed in a compact manner and shall not extend into the alley more than three (3) feet.
- (c) **Piling.** Pruned refuse shall be placed in a single compact pile, and only in front of, in the rear of, or on the side of, as the case may be, the property where it was accumulated.
- (d) **Size.** All tree limbs put out for collection shall not exceed six (6) feet in length or six (6) inches in diameter, and no single piece shall weigh more than fifty (50) pounds.

- (e) **Time.** Pickup will be on a once-a-month basis and pruned refuse may only be placed in conformance with this section during the time designated by the Public Works Director at the beginning of pickup week. Pruned refuse shall be placed out for street collection not more than seventy-two (72) hours prior to the first Monday of each month and only during this seventy-two hour time period.

For areas with alleys, pruned refuse shall be placed out for collection in the alley not more than seventy-two (72) hours prior to the third Monday of each month and only during this seventy-two (72) hour time period.

- (f) **Leaves.** Leaves shall be collected in the street only between November 1 and December 31 of each year or as directed by the Public Works Director. Leaves shall be placed separately from pruned refuse, grass clippings, shrubbery, Christmas trees and other similar materials. Leaves shall not be placed in plastic bags for collection by the City.
- (g) **Containers.** All refuse (grass clippings, leaves, twigs, shrubbery) shall be placed in containers of not more than ninety (90) gallons nor less than sixty (60) gallons capacity unless authorized by the Public Works Director.
- (h) **Christmas Trees.** Christmas trees are to be placed in street or alley with pruned refuse to be collected by the City. Wooden tree stands attached to Christmas trees are acceptable for collection by the City.

#### **4-7.1106. ADMINISTRATION OF COLLECTION SERVICE.**

The Public Works Director shall be responsible for the operation of the City pruned refuse collection service and leaf season pickup. He/she shall have charge and supervision of collection and removal, and shall prescribe and establish routes and days for the collection and removal of pruned refuse or leaves from various parts of the City, and may change the same from time to time. When such routes or days of collection are established or changed, he/she shall give notice thereof to the public in such a manner as he/she deems best. He/she shall have the power to implement this article by issuing such traditional rules, regulations and instructions in writing as he/she deems necessary to carry out the purpose and intent of this article.

SECTION 7. AMENDMENT OF CODE: Section 4-8.10 of Chapter 8 of Title 4

of the Modesto Municipal Code is hereby amended to read as follows:

**4-8.10. OFFICIALS TO BE NOTIFIED.**

Immediately upon the granting of a parade permit, the Police Chief shall send a copy thereof to the following:

- (a) The Fire Chief;
- (b) The City Manager;
- (c) The Public Works Director;
- (d) The Parks, Recreation and Neighborhoods Director;
- (e) The Community Development Director;
- (f) The Postmaster of the Modesto Post Office; and
- (g) Any public transportation or other utility, the regular routes of whose vehicles will be affected by the route of the proposed parade.

SECTION 8. AMENDMENT OF CODE: 4-15.103, 4-15.104, 4-15.105, 4-15.106, 4-15.203, 4-15.301, 4-15.302, and 4-15.401 of Chapter 15 of Title 4 of the Modesto Municipal Code are hereby amended to read as follows:

**4-15.103. AUTHORITY TO ISSUE OUTDOOR DINING PERMITS.**

The Public Works Director, or his or her designated representative, is hereby authorized to issue outdoor dining permits, revocable at will, to owners or operators of business establishments for the placement of tables and chairs in the public sidewalk, court, alley or street adjacent to and incidental to the operation of a food service establishment, according to the procedures as set forth in this article. An outdoor dining permit will not be issued where, in the opinion of the Public Works Director, or his or her designated representative, the speed, volume or nearness of vehicular traffic is not compatible with outdoor dining. Issuance will not be unreasonably withheld.

**4-15.104. APPLICATION FOR OUTDOOR DINING PERMIT.**

Every owner or operator of a business establishment desiring to place tables and chairs in a public sidewalk, court, alley or street shall first submit an application for the issuance of such a permit to the Public Works Department. Each

application shall state the name of the applicant, the name and address of the establishment, the proposed area to be occupied by the tables and chairs, and the hours and days that the area is to be so occupied. The application shall be accompanied by a space-use plan which indicates the location, number and arrangement of the tables and chairs to be used, the location of the entrance to the establishment, and the location of any existing sidewalk obstructions in the proposed area to be occupied by the tables and chairs. Trees, traffic signs, benches and all similar obstacles shall constitute obstructions.

#### **4-15.105. ISSUANCE OF OUTDOOR DINING PERMIT.**

If the proposed design and location of the tables and chairs to be used for outdoor dining, as described in the application, conforms to those guidelines set forth by the Public Works Director, the Public Works Director, or his or her designated representative, shall issue an encroachment permit to the applicant.

No permit shall be issued until the permit applicant has paid a one-time fee for the permit. The amount of the permit fee is in an amount as shall be set forth from time to time by resolution of the City Council.

Once an encroachment permit is issued by the Public Works Director, the permittee shall display a copy of the approved permit within the business establishment in an area clearly visible from the sidewalk.

#### **4-15.106. CONDITIONS AND RESTRICTIONS PERTAINING TO OUTDOOR DINING.**

The issuance of permits by the Public Works Director for the use of City sidewalks and public rights-of-way for the consumption of food or beverages in front of business establishments are subject to the following:

- (a) The outdoor dining area shall leave not less than four (4) consecutive feet of sidewalk width to ensure adequate space for pedestrian traffic on the adjacent sidewalk. The minimum width stated above must be free of all obstacles and obstructions for a clear path of travel. For the purpose of minimum clear path, traffic signs, trees and all similar obstacles shall constitute obstructions. It is the responsibility of the permittee to keep this sidewalk pedestrian zone clear and unimpeded for pedestrian movement. The specific requirements for this minimum clear path are set out on a diagram available to the applicant from the Public Works Department.
- (b) Outdoor dining areas may not intrude on pedestrian "clear zones" at corners and thus must be set back a minimum of six (6) feet from any

crosswalk. The outdoor dining area must not interfere with curbs, ramps or driveways. No element of the outdoor dining area may interfere with access to any building including all paths of travel or exit.

- (c) When the sidewalk area is not in use for seating and service, all removable fixtures (i.e. chairs, planters, tables, etc.) shall be stored inside the restaurant premises.
- (d) The outdoor dining area must remain clear of litter at all times. The permittee shall maintain the tables and chairs in the permitted outdoor dining area in a clean condition at all times.
- (e) Outdoor dining areas must conform to and comply with all relevant regulations in this Code and all applicable building laws including State laws and regulations.
- (f) Tables, chairs, and customers shall be confined to the area shown on the application submitted by the permittee.

#### **4-15.203. SUSPENSION OR REVOCATION OF OUTDOOR DINING PERMIT.**

The outdoor dining permit granted under this chapter shall be subject to suspension or revocation by the Public Works Director when the permittee violates any of the restrictions and conditions set forth in this chapter, or any rule or regulation of the Public Works Director adopted in pursuance of the provisions of this chapter. The outdoor dining permit shall be automatically suspended upon the termination of the insurance required under Section 4-15.107 of this chapter. Upon termination of the insurance required under Section 4-15.107, permittee agrees to indemnify and hold the City of Modesto, its officers, agents and employees free and harmless from any and all damages, costs, charges or liability of any kind or character that may arise out of, relate to, or in any way be connected with the exercise of the rights granted pursuant to the issuance of the encroachment permit.

The City of Modesto must notify the State Department of Alcoholic Beverage Control of any suspension or revocation of an outdoor dining permit granted under this chapter.

#### **4-15.301. PROTEST ISSUANCE OF PERMIT.**

Any person or persons who deem their interests or property, or that of the general public, will be adversely affected by the occupancy of a public sidewalk, court,

alley or street with tables and chairs for outdoor dining and for which permission has been applied for under the provisions of this chapter, may protest the issuance of said permit by writing to the Public Works Director within thirty (30) calendar days after the applicant has posted the outdoor dining permit as required under Section 4-15.105 of this chapter. Upon receipt of any such protest, the Public Works Director will schedule a hearing to hear all protests or oppositions to the issuance of an outdoor dining permit.

#### **4-15.302. DENIAL OF PERMIT.**

Upon denial of a permit by the Public Works Director, an applicant may, within fifteen (15) calendar days following notification of such denial, file a notice of appeal to the City Council, who shall then hear all appeals concerning the application for permit.

#### **4-15.401. PENALTIES.**

The placement of tables and chairs on a public sidewalk or other public right-of-way without a permit issued in compliance with this chapter shall constitute an infraction punishable by a fine of one hundred dollars (\$100.00). The nonpayment of such fine, or the continued existence of a condition in violation of this chapter, shall be grounds for the Public Works Director to prohibit placement of tables and chairs by the responsible owner or operator of the fronting business establishment until such penalty has been paid or the condition corrected.

SECTION 9. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 10. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

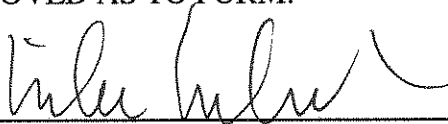
APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3364-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> day of November, 2004, Councilmember Hawn, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: December 23, 2004

ORDINANCE NO. 3365-C.S.

AN ORDINANCE AMENDING SECTIONS 5-1.102, 5-1.503, 5-1.504, 5-1.505, 5-1.506, 5-1.510, 5-1.511, 5-1.512, 5-1.513, 5-1.514, 5-1.515, 5-1.516, AND 5-1.518 OF CHAPTER 1 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO GENERAL SANITATION; SECTIONS 5-5.03, 5-5.05, 5-5.09, 5-5.10, 5-5.11, 5-5.15, 5-5.16, 5-5.18, 5-5.33, 5-5.38, AND 5-5.41 OF CHAPTER 5 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO SOLID WASTE; AND SECTIONS 5-6.103, 5-6.309, 5-6.701, AND 5-6.805 OF CHAPTER 6 OF TITLE 5 OF THE MODESTO MUNICIPAL CODE RELATING TO SEWAGE COLLECTION AND DISPOSAL.  
(REORGANIZATION OF DEPARTMENTS)

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Sections 5-1.102, 5-1.503, 5-1.504, 5-1.505, 5-1.506, 5-1.510, 5-1.511, 5-1.512, 5-1.513, 5-1.514, 5-1.515, 5-1.516, and 5-1.518 of Chapter 1 of Title 5 of the Modesto Municipal Code are hereby amended to read as follows:

**5-1.102. ENFORCEMENT OF HEALTH AND SANITATION REGULATIONS.**

The Health Officer, or such representatives as he/she may authorize, shall be responsible for the enforcement of the provisions of this title insofar as they relate to health and sanitation, and are authorized to issue a written notice to appear, pursuant to the provisions of Penal Code Section 853.6, whenever they have reasonable cause to believe that a violation of this title has been committed in their presence. The Public Works Director shall be responsible for enforcing the provisions of these regulations insofar as they relate to the functions and duties of his/her department. Any enforcement officer, so named, shall have the right to enter any and all premises for the purposes of determining the sanitary condition thereof, if there are reasonable grounds to believe that the violation of these regulations is occurring; and any person denying or obstructing such entry shall be guilty of a misdemeanor and subject to the penalty provided by this Code.

**5-1.503. DEFINITIONS.**

- (a) **"Abandoned well"** means a well that has not been used for a period of one (1) year, unless the owner or person in lawful possession of the well

demonstrates his or her intention to use the well again for supplying water or other associated purpose (such as an observation well). The well shall then be considered "inactive". As evidence of his/her intentions for continued use, the owner shall properly maintain the well in such a way that:

- (1) The well has no defects which will allow the impairment of quality of water in the well or in the water-bearing formations penetrated.
- (2) The well is covered such that the cover is watertight and cannot be removed except with the aid of equipment or the use of tools.
- (3) The well is marked so that it can be clearly seen.
- (4) The area surrounding the well is kept clear of brush or debris.

If the pump has been removed for repair or replacement, the well shall not be considered "abandoned". During the repair period, the well shall be adequately covered to prevent injury to people and to prevent the entrance of undesirable water or foreign matter.

Observation or test wells used in the investigation or management of groundwater basins by governmental agencies or engineering or research organizations are not considered "abandoned" so long as they are maintained for this purpose. However, such wells shall be covered with an appropriate cap, bearing the label, "Observation Well", and the name of the agency or organization, and shall be secured and locked when measurements are not being made. When these wells are no longer used for this purpose or for supplying water, they shall be considered "abandoned".

- (b) **"Cathodic protection well"** means any artificial excavation by any method for the purpose of installing equipment or facilities for the electrical protection of metallic equipment in contact with the ground.
- (c) **"Code"** means the Municipal Code of the City of Modesto.
- (d) **"Department"** means the Public Works Department of the City of Modesto.
- (e) **"Director"** means the Public Works Director of the City of Modesto or their duly authorized representative.

- (f) **"Monitoring well"** means any well used exclusively for monitoring or sampling conditions of a water-bearing aquifer, e.g., water pressure, depth, movement, or quality.
- (g) **"Exploratory boring"** means an uncased excavation used to determine the engineering or geological properties of subsurface materials by seismic investigation, direct observation or any other means.

**5-1.504. PERMIT.**

The Public Works Director is authorized to issue a permit to install, construct, repair, modify or destroy a water well, observation well, monitoring well, emergency extraction well, or any other excavation that may intersect groundwater in the City for any purpose whatsoever. A nonrefundable fee shall be paid upon application for the permit in an amount as approved from time to time by resolution of the City Council.

**5-1.505. PERMIT APPLICATION.**

Applications for permits shall be made to the Public Works Director, on forms supplied by the Public Works Director, and shall include the following:

- (a) A plot plan indicating the exact location of the well with respect to the following features within a radius of five hundred (500) feet of the well:
  - (1) Approximate property lines;
  - (2) All sewage disposal systems or works carrying or containing sewage or storm water runoff;
  - (3) All intermittent, perennial, natural, or artificial water bodies or water courses;
  - (4) Drainage pattern of the property;
  - (5) All existing wells of all types, regardless of whether they are subject to regulation under this article;
  - (6) All access roads; and
  - (7) All subsurface utilities.

- (b) Location of property, including street address, township/range/quarter section, or other information sufficient to identify the well site location.
- (c) Name and address of the person who will perform the work on the well.
- (d) Name and credentials affiliation of inspector.
- (e) Proposed depth of well.
- (f) Proposed use of well.
- (g) Proof satisfactory to the Public Works Director that the person who will construct, modify or abandon the well or boring(s) possesses a valid license to perform such work which has been issued in accordance with the California Contractors License Law (Chapter 9 of Division 3 of the Business and Professions Code, Sections 7000-7173).
- (h) A certificate satisfying the requirements of the California Workers Code (Sections 3800 et seq.). Compensation and Insurance Law (Part 1 of Division 4 of the Labor Code Sections 3200-4418).
- (i) Such fee as Council may from time to time impose. The required fee shall accompany the application and shall be nonrefundable.
- (j) Such other information as the Public Works Director may deem necessary to determine whether underground waters meet minimum protection standards as set below.

**5-1.506. PERMIT ISSUANCE.**

Prior to the issuance of a permit, if the Public Works Director so requires, an applicant shall deposit with the City Clerk a security instrument, in a form acceptable to the City Attorney and in an amount deemed necessary by the Public Works Director to insure proper and complete performance of permitted work. The security amount shall not exceed one hundred (100) percent of the total estimated cost of the permitted work.

**5-1.510. EXTENSION OF PERMIT TERM.**

The Public Works Director may grant one (1) or more extensions of a permit, each for a period not exceeding three (3) months, if the permittee demonstrates to the satisfaction of the Public Works Director that circumstances beyond the permittee's control prevented completion of the permitted work prior to permit

expiration. Any such extension granted may be subject to such conditions as the Public Works Director may deem necessary, including but not limited to a cash deposit, security bond, or other security instrument to insure proper and complete performance of the permitted work.

#### **5-1.511. PERMIT DENIAL OR REVOCATION.**

Whenever it appears to the Public Works Director that an application should be denied under the standards herein, or that a permittee is in violation of any of the provisions of the permit, this Code, or any applicable federal, state, or local provisions of law, he/she shall have the authority to deny the application or to summarily suspend the permit. The suspension order shall also constitute notice of proposed revocation.

Written notice of such proposed revocation shall be given by depositing in the United States mail a notice directed to said permittee at the address given in the application. The notice shall set forth the reasons for the proposed revocation and shall notify the permittee that he or she has ten (10) days in which to file a written request for a hearing before the Public Works Director.

#### **5-1.512. NOTICE AND REVIEW OF DENIAL OR REVOCATION.**

The applicant or permittee shall be notified in writing that applicant or permittee shall have ten (10) days from the date of such notice to request in writing a hearing before the Public Works Director or his/her designee to appeal denial of the permit application or to determine if the permit should be revoked. If the applicant or permittee fails or declines to make any such timely request, such omission shall be deemed a waiver of the applicant's or permittee's rights to be heard on the pending matter, and the application will be deemed denied or the permit may be revoked.

In case of an application denial, or a summary suspension or notice of revocation, the Public Works Director shall provide a hearing within fifteen (15) days after receipt of a written request from the permittee, at which hearing the permittee may present oral or written evidence why the application should be granted or why the permit should not be revoked. Notice of the time and place of such hearing shall be given to the applicant or permittee by deposit of the notice in the United States mail at least ten (10) days before the hearing to the address given in the application.

If the application is denied or the permit is revoked, written notice shall be given to the applicant or permittee within twenty-five (25) days of the close of the hearing. Notice shall be given by United States mail. The permittee will be

presumed to have received said notice within five (5) days after mailing. It shall be unlawful for any person whose application is denied or whose permit is revoked under this action to construct, operate, or maintain any well within the City. Any person who does so without a permit is guilty of an infraction and subject to criminal prosecution and/or civil litigation as provided in this Code.

No person whose permit is denied or revoked may apply for a permit to construct, operate, or maintain any well in the City of Modesto for a period of three (3) months from the date of such denial or revocation.

Any person whose application is denied or whose permit is revoked under this article shall have the right, after receiving notice in writing of the denial or revocation, to file a written appeal to the City Council pursuant to the provisions of Chapter 4 of Title 1 of this Code.

#### **5-1.513. STANDARDS: ADOPTION BY REFERENCE.**

Standards for the construction, repair, modification, abandonment, or destruction of well so as to protect groundwater from contamination and pollution and to preserve health, safety, and welfare shall be those set forth in the California Department of Water Resources Bulletin No. 74-81 dated December 1981 and entitled *Water Well Standards: State of California* as supplemented by California Department of Water Resources Bulletin No. 74-90 (Supplement to Bulletin 74-81), dated January 1990 and entitled *California Well Standards: Water Wells, Monitoring Wells, Cathodic Protection Wells*, together with all appendices thereto, as compiled and published by the Department of Water Resources of the Resources Agency of the State of California.

These certain documents, three (3) copies of which are on file in the Office of the City Clerk of the City of Modesto, as hereinafter amended, deleted, modified and added to, and the same are hereby adopted by this reference as the Groundwater Conservation Code of the City of Modesto, with the following additions:

- (a) Every new, repaired, or modified community water supply well or individual domestic water well, after construction, modification, or repair and before being placed into service, shall be thoroughly cleaned of all foreign substance and shall be thoroughly disinfected utilizing the procedures set forth in Appendix C of the aforementioned Bulletin No. 74-81.
- (b) Exploratory boring deeper than ten (10) feet shall be destroyed immediately upon completion of testing by complete filling and/or sealing of the borehole in accordance with criteria established by the Public Works

Director. The Public Works Director may waive complete sealing if the permittee demonstrates to the Public Works Director's satisfaction that City's groundwater protection and conservation shall not be impaired by the permittee's proposed methods.

#### **5-1.514. WELL LOGS.**

Any person who has performed any work for which a permit is required hereunder and which involves drilling, digging, excavating or boring of a well, or exploratory boring, shall, within thirty (30) days following completion of such work, submit to the Department an accurate and complete well log on forms satisfactory to the Public Works Director (DWR 188 [latest revision]). In areas for which the Public Works Director deems the available subsurface information insufficient, the permit may require any person performing a completion operation to submit a well log prior to commencement of the completion operation. Well logs shall include all of the following:

- (a) A detailed record of the boundaries, character, size, distribution and color of all lithologic units penetrated;
- (b) The specifications and approvals for well casing;
- (c) The location of perforations filter pack and sealing zones;
- (d) Reports on the quantity and quality of groundwater (if available); and
- (e) Any other data required by the Public Works Director in the permit conditions.

#### **5-1.515. INSPECTION.**

The Public Works Director and City inspectors may, at any and all reasonable times, enter any and all places, property, premises, enclosures, and structures for the purpose of making examinations and investigations to determine compliance with any provision of this article.

#### **5-1.516. WELL INSPECTION REPORTS.**

Any inspector who has inspected any work pursuant to conditions of a permit required hereunder and which involves drilling, digging, excavating or boring a well shall, not later than thirty (30) days after completion of such work, submit to the Department an accurate and complete well inspection report on forms

satisfactory to the Public Works Director. Well inspection reports shall include all of the following:

- (a) Permit number;
- (b) Type and volume of sealing material and depth of seal(s);
- (c) Diameter of borehole and well casing in sealing zone(s);
- (d) Method of placement (if grout pipe, include number and length of sections);
- (e) Confirmation that casing was ripped or perforated (destruction only);
- (f) Conditions which may have caused sealing to be less than satisfactory;
- (g) Date sealed;
- (h) An opinion as to whether the well sealing operation was satisfactory or unsatisfactory certified by signature of the registered inspector; and
- (i) Any other data required by the Public Works Director in the permit conditions.

#### **5-1.518. CERTIFICATE OF EXEMPTION.**

Any owner or lawful possessor of a water well or monitoring well which is abandoned or soon to be abandoned but who intends to use such well again may apply to the Public Works Director, in a form satisfactory to the Public Works Director, for exemption from the requirement that such well be destroyed. If the Public Works Director determines from review of said application that exemption from destruction would not pollute or contaminate groundwater and would not create or aggravate a hazard to health or safety, the Public Works Director shall issue a certificate of exemption. A certificate of exemption shall expire three (3) years after issuance and may be terminated by the Public Works Director at any time prior to expiration upon the Public Works Director's determination that destruction of the well is necessary to prevent pollution or contamination of groundwater or to avoid health or safety hazards. Successive certificates of exemption may be issued with respect to a well in the same manner as the original certificate.

SECTION 2. AMENDMENT OF CODE: Sections 5-5.03, 5-5.05, 5-5.09, 5-5.10, 5-5.11, 5-5.15, 5-5.16, 5-5.18, 5-5.33, 5-5.38, and 5-5.41 of Chapter 5 of Title 5 of the Modesto Municipal Code are hereby amended to read as follows:

**5-5.03. DEFINITIONS.**

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

- (a) **"Annexation"** means the legal process of including new territory within the incorporated boundaries of the City.
- (b) **"Automated collection container"** means a standard container designed for automated collection.
- (c) **"Cannery or food processing waste"** means the solid residues resulting from canning/food processing operations, which is segregated by the generator and which is collected for reuse.
- (d) **"Collection"** means the collection and transport of solid waste.
- (e) **"Collection routes"** means streets or areas designated for collection on a particular day/schedule.
- (f) **"Collection vehicle"** means any vehicle used by the collector for the collection of solid waste.
- (g) **"Collector"** means a person or firm authorized by a valid service agreement with the City of Modesto to collect solid waste within the City limits.
- (h) **"Commercial"** means occurring in a business zone.
- (i) **"Construction and demolition sites"** means sites where construction or demolition activities are taking place.
- (j) **"Containerized yard waste"** means yard waste set out for collection in a standard container.
- (k) **"Customer"** shall mean any person, firm or corporation receiving service under the provisions of this chapter.

- (l) **"Designated recycling collection location"** means the location where an authorized recycling collector has agreed with a customer to pick up segregated recyclable materials as approved by the Public Works Director.
- (m) **"Detachable container"** means a container, watertight and with a cover, designed for direct dumping into a collection vehicle, and constructed in standard sizes with a minimum of one (1) cubic yard in capacity, as approved by the Public Works Director, and furnished by a collector.
- (n) **"Disposal"** means the final disposition of solid waste at a solid waste facility.
- (o) **"Drop box container"** means a metal box designed for loading upon a vehicle for transportation to a solid waste facility, with a minimum of twenty (20) cubic yards' capacity, of a design approved by the Public Works Director, and furnished by a collector.
- (p) **"Finance Director"** means the Finance Director of the City of Modesto or his/her duly authorized agent.
- (q) **"Garbage"** means putrescible kitchen and table food waste and animal, fish, food, fowl, fruit or vegetable matter, or any portion thereof, resulting from the storage, preparation, cooking, or handling of food stuffs, or any other material contaminated by or rendered useless because of contact with any putrescible matter, except that garbage shall not include cannery or food processing wastes as defined in Section 5-5.03(c), industrial garbage as defined in Section 5-5.03(w), or swill as defined in Section 5-5.03(ap).
- (r) **"Garbage/Recyclables"** means garbage and recyclables commingled in the same container. Garbage/recyclables shall also include rubbish when said rubbish is included in the same container.
- (s) **"Hazardous substance or hazardous wastes"** means all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in the Health and Safety Codes or in future amendments to or recodifications of such statutes, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency pursuant to the Federal Resource Conservation and Recovery Act and all future amendments thereto.
- (t) **"Household hazardous waste"** means hazardous waste generated at a residential location within the City.

- (u) **"Health Officer"** means the Stanislaus County Department of Environmental Resources.
- (v) **"Industrial areas"** means areas which are zoned industrial by the City's Zoning Code.
- (w) **"Industrial garbage"** means garbage produced by any person, firm or corporation engaged in the business of processing or manufacturing agricultural products, animals, poultry, goods, wares or other products or materials, who processes or manufactures the same for the purpose of wholesale in processed or manufactured form, and shall include cannery/food processing waste. Industrial garbage also means garbage produced by any person, firm or corporation engaged in the business of building construction and/or building demolition.
- (x) **"Industrial garbage collector"** means an agent or employee of the City, or any person, or the employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of industrial garbage.
- (y) **"Initial term and any extensions"** means the term of a service agreement and any extensions beyond that time period as established by the City Council.
- (z) **"Place" or "Premises"** means every dwelling house, dwelling unit, apartment house or multiple-dwelling building, trailer or mobile home park, store, restaurant, rooming house, hotel, motel, hospital, office building, department store; manufacturing, processing or assembling shop or plant; warehouse; and every other property or building where any person resides or any business or activity is carried on or conducted within the City of Modesto.
- (aa) **"Property value"** means a worth to the extent that a person will collect the materials involved with compensation to the owner or producer, or at no cost to the owner or producer.
- (ab) **"Pruned refuse"** means tree trimmings and similar material not to exceed six (6) feet in length and six (6) inches in diameter, and no single piece shall weigh more than fifty (50) pounds.
- (ac) **"Public Works Director"** means the Public Works Director of the City of Modesto and his/her duly authorized agent.

- (ad) **"Recyclable materials"** means domestic, commercial or industrial by-products which may have an economic value if recycled, which may be source separated, set aside, handled, packaged or offered for collection by the residence/business. Recyclables include, but are not limited to, glass, newspaper, plastics, metal, bi-metal, aluminum, and other materials.
- (ae) **"Recyclables"** means recyclable materials.
- (af) **"Recycling"** means the process of collecting, sorting, cleansing, treating, reconstituting, and/or marketing recyclable materials which would otherwise be disposed of in a landfill. The collection, transport or disposal of solid waste which is not intended for, or capable of being, reused, shall not be construed to be recycling.
- (ag) **"Recycling collector"** means a person, firm, organization or company which the City has authorized to provide recycling service in the City.
- (ah) **"Recycling container"** means any container provided by an authorized recycling collector to a customer for the purpose of segregating recyclable materials for collection by collector. Recycling containers shall be clearly marked to indicate purpose and to warn that theft of the container, theft of its contents, or diversion for uses other than by the collector are punishable under this Code.
- (ai) **"Removal"** means transportation and disposal of solid waste by noncustomers in accordance with the provisions of this chapter.
- (aj) **"Residential premises"** means any dwelling unit the occupant of which places his/her solid waste in a standard container.
- (ak) **"Rubbish"** means nonputrescible, useless, unused, unwanted or discarded material or debris, either combustible or noncombustible, which by their presence may injuriously affect the health, safety and comfort of persons and property in the vicinity thereof.
- (al) **"Salvageable waste"** means matter and material which will be reused and which has a property value.
- (am) **"Service area"** means the area of the City to be served by a collector as described in the service agreement between City and collector.
- (an) **"Solid waste"** means all putrescible and nonputrescible solid, semi-solid and liquid waste accumulated or delivered for collection and disposal

within the City and includes, but is not limited to, construction debris, demolition debris, bulky waste, and yard waste. Solid waste does not include hazardous waste or household hazardous waste, designated waste, infectious waste, recyclable materials when recycled, sewage, or abandoned automobiles.

- (ao) **"Standard container"** means a plastic container, watertight and with a close-fitting cover, of not less than sixty (60) nor more than ninety (90) gallons' net capacity of a design satisfactory to the Public Works Director or such other disposal unit approved by the Public Works Director, and supplied by the solid waste collector to its residential customers. The Public Works Director shall make the determination whether a residential customer receives a sixty- or a ninety-gallon container.
- (ap) **"Swill"** means all classes of putrescible, animal, fish, fowl, fruit or vegetable matter, and shall include matter or substances used in the preparation, cooking, dealing in or storage of meats, fowl, fish, fruits and vegetables that are subject to immediate decay and the attraction of flies or rodents, and having a property value.
- (aq) **"Swill collector"** means an agent or employee of the City, or any person, or the agents, assignees, or employees thereof, with whom an agreement shall have been entered under the terms of this chapter for the collection of swill.
- (ar) **"Term"** means the length of an agreement entered under the terms of this chapter.
- (as) **"Yard waste"** means leaves, weeds, grass cuttings, vines, shrubbery, similar soft vegetative materials, and woody prunings from trees which are cut up into two (2) foot lengths no larger than six (6) inches in diameter for placement in a yard waste recycling container, except that yard waste shall not include pruned refuse or source separated leaves set out for collection between November 1 and December 31 of each year pursuant to Article 11 of Chapter 7 of Title 4 of this Code.
- (at) **"Yard waste recycling container"** means a dark green standard container to be used for the separate collection and recycling of yard waste. Yard waste recycling container shall also mean a detachable or other container as approved by the Public Works Director, used for the collection and recycling of yard waste from commercial or other customer classes.

#### **5-5.05. DEPOSITING OR BURYING SOLID WASTE.**

No person shall throw, drop, leave, dump, bury, place, or otherwise dispose of any solid waste upon any property within the City limits of the City, either with or without intent to remove the same from such property; or upon any street, way, sidewalk, gutter, stream or creek or the banks thereof, or any public place or public property within the City limits of the City, except as otherwise approved by the Public Works Director, or at a permitted solid waste facility approved for such use.

#### **5-5.09. NUMBER OF CONTAINERS REQUIRED.**

All places or premises within the City shall have sufficient containers of the approved type to hold all garbage, garbage/recyclables, and yard waste generated, produced or accumulated on the place or premises during a one (1) week period, unless a more frequent collection schedule has been approved or directed pursuant to this chapter. In determining the sufficiency of the number of containers required, the following minimum standards shall apply.

- (a) One (1) family and two (2) family dwellings: Effective January 1, 1997, one (1) black standard container for garbage and garbage/recyclables, and one (1) dark green standard container for yard waste recycling per dwelling unit.
- (b) Three (3) family dwellings, apartment houses, and multiple-dwelling buildings: Effective January 1, 1998, one (1) standard container per dwelling unit for garbage and garbage/recyclables, unless a lesser number is authorized by the Public Works Director, and sufficient yard waste collection containers of a type approved by the Public Works Director.
- (c) Motel, hotel, trailer park, or mobile home park: One (1) standard container for garbage and garbage/recyclables per unit or space, unless a lesser number is authorized by the Public Works Director, and sufficient yard waste collection containers of a type approved by the Public Works Director.
- (d) Commercial place or premises: Effective January 1, 1998, not less than one (1) standard container for garbage or garbage/recyclables, and sufficient yard waste collection containers of a type approved by the Public Works Director.

Customers responsible for solid waste removal or collection services for apartment houses, multiple-dwelling buildings, commercial and industrial places

or premises may arrange for the use of detachable containers and/or drop box containers instead of standard containers. These arrangements shall be made with the collector on the basis of charges established for this purpose.

Nothing herein shall be construed to prohibit the joint use of a detachable container or drop box container by two (2) or more customers upon approval of the Public Works Director.

#### **5-5.10. PROHIBITED LOCATION OF CONTAINERS.**

Solid waste, rubbish, swill, and industrial garbage containers shall not be placed or allowed to remain in or on any street right-of-way, except on solid waste pickup day or as otherwise authorized by the Public Works Director.

#### **5-5.11. CONTAINER LOCATIONS.**

- (a) On single-family and two (2) family premises, standard solid waste containers shall be placed by the customer on the premises and when subject to collection may be collected by the collector as follows:
  - (1) Where alleys exist, immediately adjacent to and accessible from the alley without the necessity of entering the premises.
  - (2) Where alleys do not exist, on the asphaltic portion of the street next to the curb, or the edge of the driveway apron, or such other location as approved by the Public Works Director.
  - (3) All containers shall be placed no more than four (4) feet from an area where the collection vehicle can reasonably park. All residential containers set out for collection shall have the necessary clearance from obstructions on either side of the container as well as overhead clearance needed for the collection vehicle to empty contents of the container without causing damage to public or private property. In case of dispute, an acceptable residential container location shall be as determined by the Public Works Director.
  - (4) All containers shall be screened from public view, except on pickup day, in a manner approved by the Public Works Director.
- (b) Standard and detachable containers for solid waste service to multiple-dwelling buildings, apartments, commercial and industrial premises shall be placed in a location no greater than fifty (50) feet from

the nearest point where the collector's vehicle can reasonably be parked. Drop box containers shall be located as agreed upon between the customer and the collector. In case of dispute, the location shall be as determined by the Public Works Director.

- (c) Containers for solid waste may be placed on premises at locations other than described in this section if the customer is handicapped or disabled and the location is approved by the Public Works Director.

#### **5-5.15. HOURS OF COLLECTION.**

- (a) No collections shall be made in residential districts, as shown on the Zoning Map of the City of Modesto, or at schools, churches, hospitals, offices or commercial establishments in or adjacent to said residential district except between the hours of 6:00 a.m. and 6:00 p.m. year-round.
- (b) No collections shall be made in commercial areas when in or adjacent to residential areas except between the hours of 6:00 a.m. and 9:00 p.m. Monday through Sunday.
- (c) No collection shall be made from premises in residential or commercial areas other than described in subsections (a) and (b) above except when prior approval has been given by the Public Works Director.

#### **5-5.16. COLLECTION EQUIPMENT.**

All collections shall be made with vehicles of a design approved by the Public Works Director. All collections shall be made as quietly as possible, and use of any unnecessarily noisy trucks or equipment is prohibited.

#### **5-5.18. REMOVAL OF SOLID WASTE BY PRODUCERS.**

Notwithstanding the provisions of Section 5-5.17:

- (a) Any person may remove or may cause to be removed from premises occupied by that person or under their control, such solid waste as is created or produced on such premises in excess of the regular solid waste collection made by City's collector if the following conditions have been or will be complied with: Subsections (b)(1) and (b)(2) of this section.
- (b) Any person may remove or may cause to be removed from premises occupied by that person or under their control, all solid waste created or

produced on such premises if all of the following conditions have been met or will be complied with:

- (1) Such removal shall be made only by the owner or occupant personally, or by employees of such owner or occupant.
- (2) All vehicles used in carrying out such removal shall be owned by or under the exclusive control of the owner or occupant, and such vehicles and activities shall meet all the requirements of this chapter and all other laws and ordinances of the State of California and the City relating to solid waste disposal.
- (3) Persons removing solid waste in excess of normal annual residential volume (defined herein as three thousand (3,000) pounds per year) shall comply with the following additional requirements:
  - (i) No waste shall be permitted to leak, blow, litter or fall from any vehicle engaged in such removal.
  - (ii) All removal shall be done safely and quietly with due regard to the property of others.
  - (iii) No person shall remove solid waste from any location within two hundred (200) feet of a public or private elementary, junior high, or high school, where such school is shown on an official map of the City, as designated by the Public Works Director, as said map shall be periodically updated, during the forty-five (45) minutes before the commencement of the regular school day and forty-five (45) minutes following the conclusion of the regular school day, where such locations are accessible to and used by children as routes to or from school.
  - (iv) Persons engaged in solid waste removal pursuant to these requirements shall be responsible for any damage in excess of normal wear and tear to the City's driving surfaces, whether or not paved, resulting from the illegal weight of, or any leakage or spillage of oils, fluids or solids by vehicles used in such solid waste removal.

- (v) Vehicles used shall comply with CHP and D.O.T. regulations, and shall be thoroughly washed and disinfected inside the collection body following each use.
  - (vi) No driver shall operate a vehicle as in subsection (b)(3)(v) of this section, without a valid and appropriate driver's license.
  - (vii) All vehicles as in subsection (b)(3)(v) of this section shall be clearly identified with the name and local telephone number of its operator affixed thereto.
  - (viii) Garbage shall be disposed of at a permitted transfer facility or at the Fink Road Sanitary Landfill. If disposed of outside of Stanislaus County, the county where disposal occurs shall have an export agreement with the City of Modesto.
  - (ix) Yard waste shall be separated from garbage/recyclables and taken to a permitted composting facility or such other locations as directed by the Public Works Director.
  - (x) Materials placed in blue, see-through recycling bags for the purpose of separating recyclables from other solid waste shall be recycled at a permitted recycling facility.
  - (xi) Insurance requirements as specified from time to time by the City's Risk Manager shall be complied with.
- (4) A cash security deposit shall be deposited with the City in an amount set from time to time by Council resolution, to ensure prompt removal of solid waste in the event it is not removed from the premises on a regular weekly basis by a noncustomer owner or person in control of the premises. The security deposit shall be made for each separate residential property or business location owned or controlled by a noncustomer, based on the frequency and volume of past collection. Events requiring City to use a noncustomer's deposit for solid waste removal shall be treated as a public nuisance subject to immediate abatement and charged to such noncustomer. Conduct requiring City to expend noncustomer deposit monies shall constitute a misdemeanor.

- (5) Persons engaged in solid waste removal shall procure and retain a receipt from a permitted solid waste facility for each week they remain a noncustomer of a collector and display all such receipts for the preceding one-quarter calendar year upon reasonable request by appropriate City authority. Failure to show proof of solid waste disposal for each week that a person is a noncustomer shall constitute a public health and safety risk sufficient to permit City to administratively require such person to become a customer.
- (c) Any producer of industrial garbage or swill, or their employees, may transport the same upon or through any street or public place of the City for disposal at a permitted disposal facility or site.
- (d) It shall be unlawful for any person acting as an employee of a producer of industrial garbage or swill to collect or transport such industrial garbage or swill from more than one (1) industrial producer thereof.
- (e) Any person engaged in the business of gardening or tree trimming, or building demolition, or construction cleanup work, including both yards and building interiors, is authorized to remove and dispose of yard waste, rubbish or salvageable waste produced as an incident to such business.

### 5-5.33. TERMINATION OF AGREEMENTS.

Any agreement entered by the Council pursuant to the provisions of this chapter may be terminated by the Council, if after conducting a public hearing on said termination, the Council finds and determines that the person doing business by virtue of such agreement has failed to comply with any of its material terms, or this chapter, has failed to render satisfactory collection services, or without cause in accordance with the provisions of the agreement.

- (a) **Termination for Cause.** The City further reserves the right to terminate the service agreement or impose liquidated damages in the event of any of the following:
  - (1) If collector practices, or attempts to practice, any fraud or deceit upon the City.
  - (2) If collector becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of collector in a bankruptcy proceeding.

- (3) If collector fails to provide or maintain in full and in effect, any or all of the bonds and/or coverages required by its service agreement with the City.
  - (4) If collector willfully and materially violates any orders or rulings of any regulatory body having jurisdiction over collector relative to its service agreement with the City, provided that the collector may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the service agreement shall be deemed to have occurred.
  - (5) If collector ceases to provide collection services as required by the service agreement over all or a substantial portion of its service area for a period of seven (7) days or more, for any reason within the control of the collector.
  - (6) If the collector willfully fails and/or refuses to provide City with required information, reports, and/or test results related to vehicle incidents or other incidents where such tests are conducted as part of an investigation of an incident, in a timely manner as provided in its service agreement.
  - (7) Any other act or omission by the collector, which materially violates the terms, conditions, or requirements of its service agreement.
- (b) **Process for Imposing Damages for Termination.** The Solid Waste Program Manager, may file a complaint with the Public Works Director charging a failure of collector to comply with the provisions of this chapter or the service agreement.
- (1) Upon issuance of the Solid Waste Program Manager's complaint, the Director shall conduct a factual investigation thereof and render a decision relative to the justification for complaint, in writing, within ten (10) days following the decision.
  - (2) If the Director determines that the collector's performance pursuant to its service agreement with the City has not been in conformity with the provisions of either the service agreement, the requirements of this chapter, or the requirements of the California Integrated Waste Management Board, including, but not limited to, the laws governing transfer, storage, or disposal of special wastes, the Director may advise collector in writing of such deficiencies.

The Director may set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be thirty (30) days from the receipt by the collector of such written notice. The Director shall review the collector's response and notify the collector of his/her decision, in writing.

- (3) A decision or order of the Director shall be final and binding on collector if the collector fails to file a "Notice of Appeal" with the City Manager within thirty (30) days of receipt of the Director's decision. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager shall either refer the appeal to the City Council for proceedings in accordance with subsection b(4) of this section, or refer the matter to a hearing officer.
  - (4) The City Council shall set the appeal on the matter referred by the City Manager for hearing within sixty (60) days from receipt by the City Manager of the appeal or referral. At the hearing, the City Council shall consider the report of the Public Works Director indicating the deficiencies, and shall give the collector, or its representatives and any other interested person, a reasonable opportunity to be heard.
  - (5) Based on the evidence presented at the public hearing, the Council shall determine whether the service agreement should be terminated, liquidated damages imposed, or both. The City Council may also find in favor of collector. The decision of the City Council shall be final and binding. Collector's performance under the service agreement is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.
- (c) **Remedies: Liquidated Damages.** The City Council may, at its discretion, assess liquidated damages not to exceed the sum of five thousand dollars (\$5,000.00) per day, for each calendar day that service is not provided by collector in accordance with the service agreement for a period not to exceed forty-five (45) days.
- (d) **Additional Remedies.** In addition to liquidated damages, above, the City shall have the following rights:
- (1) **To rent or lease equipment from collector.** The City may rent or lease equipment from collector for the purpose of collecting,

transporting, and disposing of solid waste which collector is obligated to collect, transport, and dispose of pursuant to its service agreement, for a period not to exceed six (6) months.

- (2) **To contract with others to perform the services.** The City may contract others to perform the services otherwise to be performed by collector hereunder, or perform such services itself.
- (3) **To obtain injunctive relief.** In the event of a breach under the terms of the service agreement by collector, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of the service agreement and to enjoin the breach thereof.
- (4) **To reduce the service area.** If at the time of the annual review the total number of unresolved complaints exceeds two and one-half tenths (0.25) of one (1) percent of the total annual stops for the prior year, the City Council may determine whether it is appropriate to decrease the service area of collector because of poor performance and authorize another collector to provide services. The maximum reduction in service area for poor performance under this provision shall be ten (10) percent for each occurrence.
- (5) **To invoke eminent domain.** Nothing set forth in a service agreement entered into between City and collector shall be deemed or construed to impair or affect, in any way, to any extent, the right of the City to acquire the property of the collector, either by purchase or through the exercise of the right of eminent domain, at fair market value, or be construed to contract away or to modify or abridge, whether for a term or in perpetuity, the City's right of eminent domain.
- (6) **To collect and bill collector.** Should collector fail to provide collection services as stipulated in its service agreement, within twenty-four (24) hours of a request being communicated by the City to collector to do so, the City may collect and dispose of same and collector shall be liable for all expenses incurred including, but not limited to, disposal, operating, administration, and legal costs. Reimbursement to City for such expenses will be paid by collector within thirty (30) days after date of invoice.

- (7) **To conduct inspections.** At all reasonable times during any normal business hours, the collector shall permit the City's authorized representatives to examine all property of the collector, and to examine and copy any and all records kept or maintained by the collector under its control which pertain to the service agreement.
- (e) **Force Majeure.** Collector shall not be in default under its service agreement in the event that any of the services provided by the collector under the terms of the agreement are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts, other labor disturbances or other catastrophic events which are beyond the reasonable control of collector. Other catastrophic events do not include the financial inability of the collector to perform or failure of the collector to obtain any necessary permits or licenses from other governmental agencies or the right to use the omissions of the collector. In the event a labor disturbance interrupts collection services as required by a service agreement, City may elect to exercise its rights under the service agreement.

#### **5-5.38. INSPECTION AND ENFORCEMENT.**

The Health Officer and the Public Works Director may, from time to time, inspect all premises within the City to determine compliance with and to enforce the provisions of this chapter.

#### **5-5.41. UNATTENDED NEWSPAPER RECYCLING RECEPTACLES PROHIBITED WITHOUT THE ISSUANCE OF A TEMPORARY PERMIT.**

- (a) It shall be unlawful for any person, other than a collector authorized by a service agreement with City and as expressly permitted by the Public Works Director, to place, locate, establish, maintain, erect, leave, or otherwise make available any unattended newspaper recycling receptacle which is in public view, in the City of Modesto, for the purpose of collecting discarded newspaper as hereinafter defined; provided, however, that in the case of undertakings sponsored by and located on a site owned by a bona fide nonprofit organization, or religious organization, or public agency, the City Manager or his/her delagee shall be authorized to issue temporary permits for the location and use of newspaper recycling receptacles.

- (b) The City Manager shall promulgate, and from time to time amend rules and regulations for the issuance of temporary permits; and such rules and regulations as adopted or amended are hereby incorporated herein by reference as if fully set forth herein.
- (c) For the purposes of this section, the following words and phrases shall have the meanings set forth herein:
  - (1) "**Newspaper**" shall mean newspapers, magazines, or print material of like purpose.
  - (2) "**Newspaper recycling receptacle**" shall mean any unattended bin, box, container, structure or device, the purpose of which is to serve as a container for the collection of discarded newspaper as herein defined.
  - (3) "**Person**" shall mean any natural person, partnership, corporation, association, firm, company or entity, and shall include both male and female gender.

SECTION 3. AMENDMENT OF CODE. Sections 5-6.103, 5-6.309, 5-6.701, and 5-6.805 of Chapter 6 of Title 5 of the Modesto Municipal Code are hereby amended to read as follows:

**5-6.103. DEFINITIONS.**

Unless the context specifically indicates otherwise, the following terms and phrases shall be defined herein. Words and phrases used in this chapter and not otherwise defined shall be interpreted as defined in the Code of Federal Regulation, Standard Methods for the Analysis of Wastewater, or as established by State regulatory agencies.

- (a) The following terms shall have these meaning(s) in this chapter:

**Act.** The Federal Water Pollution Control Act, also known as the Clean Water Act.

**Administrative order.** An enforcement document which directs industrial users to implement corrective or remedial measures.

**Administrator.** The person appointed by the Director to manage the affairs of the City of Modesto, POTW Pretreatment Program.

**Aliquot.** A portion of a sample. Often an equally divided portion of a sample.

**Apartment.** A building or portion thereof containing three (3) or more dwelling units.

**Approval Authority.** The State of California Water Resources Control Board, except for certain EPA oversight functions.

**Authorized representative of industrial user.** May be: (1) a principal executive officer of at least the level of vice-president, if the industrial user is a corporation; (2) a general partner or proprietor if the industrial user is a partnership or proprietorship, respectively. A duly authorized representative is responsible for the overall operation of the facilities from which the direct or indirect discharge originates.

**Baseline Monitoring Report (BMR).** A required report for all industrial users subject to a categorical pretreatment standard. A BMR provides information that documents an industrial user's compliance status with all applicable Pretreatment Standards. If an industrial user is not in compliance with the BMR, a compliance schedule will be submitted with the BMR describing actions to achieve compliance.

**Batch Process.** A treatment process in which a tank or vessel is filled with wastewater (or solution), the wastewater (or solution) is treated to meet discharge standards and is then released into the sanitary system. A batch process is intermittent not continuous.

**Best Available Technology (BAT).** A level of technology that is based on the very best (state-of-the-art) control and treatment measures that have been developed or are capable of being developed for a particular industrial category.

**Best Practical Technology (BPT).** A level of technology represented by the average of the best existing wastewater treatment performance levels within an industrial category.

**Biochemical Oxygen Demand. (BOD)** A test that measures the organic strength of wastewater. The test represents the quantity of oxygen

required by sewage for biochemical oxidation in five (5) days at twenty (20) degrees Celsius in ppm.

**Biodegradable.** Organic matter that can be broken down by bacteria to more stable forms which will not create a nuisance or give off offensive odors.

**Blowdown.** The removal of accumulated solids in boilers to prevent plugging of boiler tubes and steam lines. In cooling towers, blowdown is used to reduce the amount of dissolved solids in the recirculated cooling water.

**Building sewers.** A privately owned pipeline conveying wastewater from the premises of a user to a sewer main.

**Bypass.** The intentional diversion of wastestreams from any portion of an industrial user's treatment facility.

**Categorical industrial user.** Are all industrial users subject to National Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N.

**Categorical Industry.** An industry which possesses industrial processes, defined in the Code of Federal Regulations as Categorical Processes.

**Categorical limits.** Industrial wastewater discharge pollutant effluent limits developed by the EPA that are applied to the effluent from any industry, in any category, anywhere in the United States, that discharge to a Publicly Owned Treatment Works (POTW). These are pollutant effluent limits based on the technology available to treat the wastestreams from the processes of the specific industrial category and normally are measured at the point of discharge from the regulated process. The pollutant limits are listed in the Code of Federal Regulations.

**Categorical standards.** Industrial waste discharge standards developed by EPA that are applied to the effluent from any industry, in any category, anywhere in the United States, that discharges to a POTW. These are standards based on the technology available to treat the wastestreams from the processes of the specific industrial category and normally are measured at the point of discharge from the regulated process. The standards are listed in the Code of Federal Regulations.

**Cease and desist order.** An order by the Director requiring immediate termination of an activity or situation which threatens to create or does create a significant safety hazard non-compliance with the provisions of this chapter, or non-compliance with State and/or Federal law. The order shall be enforceable in court.

**Chemical Oxygen Demand (COD).** A test that measures the inorganic and organic strength of wastewater. The test measures the amount of oxygen consumed from a chemical oxidant, in milligrams per liter (mg/l), under conditions outlined under the latest edition of Standard Methods for the Analysis of Wastewater.

**City.** The City of Modesto in the State of California.

**Collection system.** The combined pipes, conduits, manholes, ditches, rockwells, and other structures, usually underground, whose purpose is to convey wastewater or storm water.

**Commercial user.** Any user whose premises are used to provide a product or service for retail or wholesale. Commercial shall include, but shall not be limited to, the following: Motel; hotel; boarding and rooming house; health care facility.

**Compatible pollutants.** Those pollutants such as biochemical oxygen demand (BOD), total suspended solids (TSS), and ammonia that are normally removed by the existing POTW treatment processes.

**Compliance.** The act of meeting specified conditions or requirements.

**Compliance directive.** An enforcement document which directs an industrial user to implement corrective or remedial measures.

**Compliance schedule.** An enforcement document which directs a user to create or imposes upon a user, a time schedule for meeting any provision of the sewer ordinance.

**Consistent removal.** The act of removing pollutants from wastewater in a manner which prevents the level of pollutants from exceeding any treatment standard at any time.

**Control authority.** The division of the City of Modesto, Public Works Department, which administers the POTW Pretreatment Program.

**Cooling wastewater.** The water discharged from any use to which the only pollutant added is heat or uses such as air conditioning, cooling or refrigeration.

**Correction notice.** A notice to a user or users orally or in writing, to correct its non-compliance with the sewer ordinance.

**Corrosion.** The gradual deterioration or destruction of a substance or a material by chemical action. Corrosive materials deteriorate the collection system.

**Deleterious.** Refers to something that can be or is hurtful, harmful, or injurious to health or the environment.

**Direct discharge.** The discharge of treated or untreated wastewater directly to the waters of the State of California. Direct discharges are regulated under the NPDES program.

**Director.** The Public Works Director of the City or such other persons as may be designated by the Public Works Director to perform the services or make the determinations permitted or required in this chapter to be made by the Public Works Director of the City.

**Discharge permit.** Formal authorization by the Modesto Control Authority, stipulating the conditions under which wastewater effluent may be released into the sewage system.

**Discharger.** Any person that discharges or causes a direct or indirect discharge to a public sewer.

**Dissolved solids.** Solids that are completely dissolved in water and are not removable by laboratory filtration.

**Domestic wastewater/sanitary sewage.** The liquid and solid waterborne wastes derived from the ordinary living processes of humans of such character as to permit satisfactory disposal, without special pretreatment, into the public sewer or into a private wastewater disposal system.

**Dry industry.** Any user who does not discharge non-domestic wastewater and is a member of a category of users which the Director has determined to have a potential for impact upon the POTW.

**Duplex.** A building containing two (2) dwelling units.

**Dwelling group.** Two (2) or more buildings on any one (1) lot, containing three (3) or more dwelling units.

**Dwelling unit** A suite of one (1) or more rooms which is occupied by or intended to be occupied by one (1) family.

**Enforcement.** A series of procedures and/or actions used to ensure compliance with legislation or associated rules, ordinances, or limitations.

**Environmental Protection Agency (EPA).** The Federal agency charged by law with carrying out and obtaining compliance with the Clean Water Act of 1977 and other Federal environmental laws and promulgating, interpreting and enforcing regulations implementing such statutes.

**Flammable liquid.** A liquid which by itself, or any component of it present in greater than one (1) percent concentration, has a flashpoint below one hundred (100) degrees Fahrenheit (thirty-eight (38) degrees Centigrade).

**Flashpoint.** The minimum temperature at which a liquid gives off vapor in sufficient concentration to ignite when exposed to any source of ignition.

**Grab sample.** A single sample of water collected at a particular time and place which represents the composition of the water only at that time and place.

**Grease.** Fats, oils, greases, or other ether-soluble matter, which shall include each of the following two (2) types:

- (1) Dispersed grease. Grease which is not floatable; and
- (2) Floatable grease. Grease which floats on the surface of quiescent sewage water or other liquid or which floats upon dilution of the liquid with water.

**Hazardous material management plan.** A document prepared by an industry which contains copies of Material Safety Data Sheets (MSDS) as well as additional information regarding the storage, handling and disposal of all chemicals used on site by the industry.

**Hazardous waste.** Any waste that is potentially damaging to environmental health and/or the collection system because of toxicity, ignitability, corrosivity, chemical reactivity or other reasons.

**Holding tank waste.** Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

**House sewer line.** The line connecting a user's property to the sewage system.

**Indirect discharge.** The discharge or the introduction of non-domestic pollutants from any regulated sources to the POTW, which may include certain holding tank wastes. These discharges are subject to EPA pretreatment regulations.

**Industrial user.** Any person who discharges or causes a discharge of industrial wastewater directly or indirectly to the City sewage system which requires a permit under the provisions of this chapter. This specifically includes any categorical users connected to the City sewage system whether or not they discharge process wastewater.

**Industrial wastewater/industrial waste.** All water-carried wastes and wastewater of the community, excluding domestic wastewater, and including all wastewater from any commercial or industrial production, manufacturing, processing, agricultural, or other operation. These may also include wastes of human origin similar to domestic wastewater.

**Industrial wastewater discharge.** Liquid and/or solids contained within a liquid, other than sanitary sewage, and discharged into the sewage system by an industrial user.

**Inspector.** A person authorized by the Director to inspect any development discharging or anticipating discharge to the wastewater collection system and/or the POTW.

**Interceptor.** A device or trap to reduce the amount of grease, sand, or oil entering the sewage system.

**Interference.** A discharge that alone or in conjunction with a discharge or discharges from other sources, both:

- (1) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, including either the use or disposal of sludge; and
- (2) Is a cause of a violation of any requirement of the City NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with any applicable regulation.

**Local limits.** Pollutant discharge limits set by the local POTW based on the treatment plant's efficiency in treating specific pollutants.

**Lot.** A parcel of land consisting of one (1) or more contiguous lots of record in one (1) ownership.

**Major industry.** Any industrial user whose effluent discharge exceeds 4.0 million gallons per month (MG/mo), or whose biochemical oxygen demand (BOD) is greater than or equal to twenty thousand (20,000) pounds per month, or total suspended solids (TSS) is greater than or equal to ten thousand (10,000) pounds per month.

**Mass emission rate.** The weight of material discharged to the sewage system during a given time interval. Unless otherwise specified, the mass emission rate shall mean pounds per day of a particular constituent or combination of constituents.

**Material Safety Data Sheets (MSDS).** A document normally developed by a chemical manufacturer or formulator, which provides pertinent information about a hazardous substance or mixture. The MSDS is required to be available to employees and inspectors when a hazardous substance is used or found in the workplace.

**Milestone.** A time interval given in a compliance schedule specifying the date which an assigned task is to be completed leading to the completion of the objective(s) in the compliance schedule.

**Minor industry.** Any industry with an average effluent discharge which exceeds twenty-five thousand (25,000) gallons per day (GPD), or has a reasonable potential, in the opinion of the City, to adversely affect the POTW.

**Mobile home park.** Any area or tract of land where two (2) or more spaces are rented or leased or held for rent or lease to accommodate mobile homes.

**Mobile home space.** Each space in a mobile home park designed to be used for parking a mobile home on a temporary, semipermanent or permanent basis.

**Mobile home subdivision.** Any area or tract of land improved to subdivision standards with mobile home lots.

**National Pollutant Discharge Elimination System permit (NPDES permit).** A permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342), governing direct discharges to the waters of the State.

**National pretreatment standard.** Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. 1347) which applies to a specific category of industrial users. This term includes categorical limits established pursuant to Title 40 CFR Section 403.5, or under the authority of this chapter.

**New source.** An industrial user or source constructed after the date of publication of proposed regulation in the Federal Register as defined in 40 CFR 403.3(k) as revised October 17, 1988.

**Nonbiodegradeable.** Any substances that cannot readily be broken down by bacteria to simpler forms.

**Noncompatible pollutants.** Those pollutants that are not removed by the POTW treatment system. These pollutants may be toxic waste and may cause pass-through or interference with the treatment system.

**Non-contact cooling water.** The water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

**Nonintegrated facility.** Industrial wastewater sources at a single facility that generate wastewater from different categorical pretreatment processes, but do not combine the wastestreams prior to pretreatment or discharge to the sanitary sewer.

**Nonsignificant industry.** An industry that produces and discharges less than twenty-five thousand (25,000) gallons of wastewater per day and is not classified as a significant or categorical industry.

**Notice of violation.** A notice issued by the Director or Inspector to the industrial user, hand delivered or mailed, informing the industrial user that a violation has occurred.

**Nuisance.** Anything which is injurious to health or is indecent or offensive to the senses or an obstruction to the free use of property so as to interfere with the comfort or enjoyment of life or property or which affects at the same time an entire community or neighborhood or sewer collection system or POTW or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

**Order to show cause hearing.** A meeting with representatives of a user and the Director or his/her designee to discuss reasons for non-compliance and corrective actions. At this time, the user may be issued an administrative order and/or fine(s).

**Pass through.** A discharge from an industrial source that passes through the POTW to the waters of the State in concentrations which, alone or in conjunction with other discharges, cause an NPDES permit violation.

**Permit.** The authorization by the City to the POTW facilities to discharge under specified rules and conditions.

**Permittee.** A person who has received a permit to discharge wastewater pollutants into the City sewage system subject to the requirements and conditions established by the City.

**Person.** An individual, partnership, copartnership, firm, company, corporation, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by context.

**pH.** Mathematically, pH is the logarithm (base 10) of the reciprocal of the hydrogen ion activity in a substance. The pH range is from zero (0) to fourteen (14) where zero (0) is the most acidic and fourteen (14) the most basic, and seven (7) is neutral.

**Pollutant.** Any substance which causes an impairment (reduction) of water quality to a degree that may have an adverse effect on any beneficial use of the water.

Pollutants include: any dredged soil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into waters and onto the ground, or deposited where subsurface waters may become contaminated by leaching.

**Pollution.** The man-made or man-induced impairment (reduction) of chemical, physical, biological, and radiological integrity of water.

**Pollution prevention permit.** The authorization by the control authority to wet industries or dry industries to discharge under specified rules and conditions.

**Premises.** Any lot, piece or parcel of land, and building or other structure or any part of any building or structure used or useful for human habitation or gathering or carrying on any business, industry, or occupation.

**Pretreatment or treatment.** The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutant to a POTW. The reduction or alteration can be obtained by physical, chemical, or biological processes, or process changes by other means except as prohibited by 40 CFR, Section 403.6(d).

**Pretreatment facility.** Any works or device for treatment, control, or flow limitation of sewage or industrial waste, prior to discharge into a public sewer.

**Pretreatment requirements.** Requirements for users, established by the City, State, or other regulatory agency for the insurance of compliance to pretreatment standards. Requirements may include, but are not limited to, the installation and maintenance of treatment equipment, metering facilities, and/or monitoring facilities.

**Pretreatment standards.** The maximum levels of pollutants allowed to be discharged under local, State, or Federal guidelines when implementing the best available technology to treat the process wastewater of the users.

**Process wastewater.** Any wastewater contaminated by human activities including, but not limited to, that originating from manufacturing, agriculture, processing, rinsing, washing or producing.

**Public Owned Treatment Works (POTW).** A treatment works as defined by Section 212 of the Act, (33 U.S.C. 1292) which is owned in this instance by the City. This definition includes any sewers that convey wastewater to the POTW treatment plant, but does not include pipes, sewers, or other conveyances not connected to the facility providing treatment. For the purposes of this chapter, "POTW" shall also include any sewers that convey wastewater from persons outside the City, who are, by contract or agreement users of the City treatment plant.

**Receiving waters.** Waters which are defined under 40 CFR 122 (NPDES System) as "Waters of the United States".

**Residential user.** Any user whose premises contain a dwelling unit(s) intended for permanent occupancy. Residential shall include, but shall not be limited to, the following: single-family residential; multi-family residential; condominiums/townhouses; mobile homes; senior residential housing.

**Restaurant.** A place where food is processed and served to the public.

**Sanitary sewer.** A pipe or conduit (sewer) intended to carry domestic wastewater from homes, businesses, and industries to the treatment works. Storm water runoff or unpolluted water should be collected and transported in a separate system of pipes or conduits (storm sewer) to natural watercourses.

**Sewage.** Industrial waste or sanitary sewage, or both.

**Sewage system.** The facility designated and used for the collection, treatment, and disposal of industrial wastes and sanitary sewage.

**Sewer bond redemption charge.** A charge established to compensate the City for having provided collection and treatment facilities before being able to collect revenue from the benefitted properties.

**Sewer District.** The Modesto Municipal Sewer District No. 1 established by the City Council by Resolution No. 66-543 effective August 16, 1966, encompassing the City of Modesto and portions of contiguous unincorporated areas, the legal description and boundaries of which have been recorded in the office of the Recorder of the County of Stanislaus, including areas heretofore or hereafter annexed thereto.

**Sewer lateral/sewer main.** A pipeline which collects sewage from one (1) or more individual users and transports it to subtrunk and trunk sewers.

**Sewer main service area.** An area that is one hundred sixty (160) acres or less which is served by the extension of sewer mains. The sewer mains are connected to either a subtrunk sewer or a trunk sewer.

**Sewer service.** The services and facilities for the collection, treatment, and disposal of industrial wastes and sanitary sewage.

**Sewer service charge.** A charge established to pay the cost of operation, maintenance, and debt service of the sewage system.

**Shall** is mandatory; **may** is permissive.

**Show cause order.** An order for an industrial user to appear before the Director or the Director's designee to explain any noncompliance and why specified enforcement actions should not be taken.

**Significant Industrial User (SIU)** includes:

- (1) All categorical users, and;
- (2) Any noncategorical users that
  - (i) Discharge twenty-five (25,000) gallons or more per day of process wastewater (excluding domestic wastewater); or
  - (ii) Contributes a process waste stream which makes up five (5) percent or more of the average dry weather hydraulic or organic (BOD, SS) capacity of the POTW; or
  - (iii) Has a reasonable potential, in the opinion of the City, to adversely affect the POTW.

**Significant Noncompliance (SNC)** includes:

- (1) Chronic violations where sixty-six (66) percent or more of the measurements exceed the same daily maximum limit or the same average limit in a six (6) month period.
- (2) Violations where thirty-three (33) percent or more of the measurements exceed the same daily maximum limit or the same average limit by more than the Technical Review Criteria (TRC) in a six (6) month period.
- (3) Failure to provide reports for compliance schedules, self-monitoring data, or categorical standards (BMR, ninety (90) day compliance reports, and periodic reports) within thirty (30) days from the due date.
- (4) Any discharge that has caused imminent endangerment of human health/welfare or to the environment and has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.
- (5) Any other violation(s) of an effluent limit (average or daily maximum) that the City believes has caused, alone or in combination with other discharges, interference with POTW (e.g. slug loads) or pass-through, or endangerment of health of the POTW personnel or the public.
- (6) Violations of compliance schedule milestones, contained in a local control mechanism or enforcement order, for starting construction, completing construction, and attaining final compliance by delay of ninety (90) days or more after any compliance schedule date.
- (7) Any other violations or violations that the Director considers to be significant.

**Significant violation.** A violation which remains uncorrected for forty-five (45) days after notification of noncompliance; is part of a pattern of noncompliance over a twelve (12) month period; involves a failure to accurately report noncompliance; or resulted in the POTW exercising its emergency authority under Section 403.8 (f)(1)(vi)(B).

**Slug load/slug discharge.** Any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen (15) minutes more

then five (5) times the average twenty-four (24) hour concentration or flow rate during normal operation.

**Spill containment.** A government agency approved protection system installed by the permittee to prohibit the discharge of non-compatible pollutants to the sewer.

**Standard industrial classification.** A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1987, as amended and supplemented.

**Standard methods.** Procedures described in the current edition of *Standard Methods for the Examination of Water and Wastewater*, as published by the American Public Health Association, the American Water Works Association and the Water Pollution Control Federation.

**State.** The State of California.

**Storm water.** Water resulting from any form of natural precipitation.

**Subtrunk sewer.** A pipeline designed to transport sewage from the subtrunk sewer service area to the trunk sewer.

**Subtrunk sewer extension charge.** A charge established to equalize the costs of connecting the in-tract facilities and/or oversize facilities of a particular subdivision or trunk sewers so that developments close to the chosen trunk sewer alignments do not receive unfair advantage over those located further away.

**Subtrunk sewer service area.** An area that is one hundred sixty (160) acres or larger that is not adjacent to a trunk sewer that is served by a subtrunk sewer.

**Technical Review Criteria (TRC).** An EPA term that defines the magnitude of a limits violation. The TRC is calculated by multiplying the daily average maximum limit by the applicable TRC value (TRC=1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH.)

**Total Suspended Solids (TSS).** Any insoluble material contained as a component of wastewater and capable of separation from the liquid

portion of the wastewater by the appropriate filtering procedures and expressed in terms of milligrams per liter.

**Total Toxic Organics (TTO).** The sum of the concentrations of the toxic organic compounds, listed in the Code of Federal Regulations, present in the industrial users process wastewater discharge.

**Toxic pollutant.** Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the EPA under the provisions of the Act Section 307(a) or other acts.

**Trunk sewer.** A pipeline which transports sewage from sewer main service areas and subtrunk sewer service areas to the water quality control plant.

**User.** Any person responsible for payment of sewer service charges for premises or any person who discharges, causes or allows the discharge of wastewater directly or indirectly to the sewage system. This includes residential, commercial, and industrial users as defined herein. This term specifically includes any categorical users connected to the City sewerage system whether or not they discharge process wastewater.

**Waste manifest.** The receipt which is retained by the generator of hazardous wastes as required by the State and/or the United States Government pursuant to RCRA, or the California Hazardous Materials Act, or that receipt which is retained by the generator for recyclable wastes or liquid non-hazardous wastes as required by the POTW.

**Waste hauler.** Any person carrying on or engaging in vehicular transport of wastewater as part of, or incidental to, any business for the purpose of discharging said wastewater into the POTWs system.

**Wastewater.** The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, whether treated or untreated, which is contributed into or permitted to enter the City's facilities.

**Wastewater discharge permit.** A control mechanism issued to an industrial user, or any person discharging to the sewage system that the Director determines needs a permit, to regulate its discharge of toxic, organic, or hydraulic loading to the wastewater collection, conveyance, and treatment system.

**Water quality control plant.** The plant owned by the City and designed for the treatment and disposal of sewage, including a remote oxidation ponding site.

**Water quality requirements.** Requirements for City's treatment plant effluent, or for receiving waters, established by law, or by State or Federal regulatory agencies, for the protection of receiving water quality.

**Waters of the State.** All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State or any portion thereof.

**Wet industry.** Any user which is not a Significant Industrial User (SIU) and has a non-domestic wastewater discharge.

#### **5-6.309. RULES AND REGULATIONS.**

- (a) No person shall connect property outside the Sewer District to the sewage system without first obtaining the consent of the City Manager and the Public Works Director, and paying the fees and charges imposed by the City. In considering applications for furnishing sewer service to property located outside the Sewer District, the City Manager may impose such reasonable conditions to the granting of such privilege as the City Manager deems to be in the best interest of the City. Any agreements for the provision of such sewer service shall be approved as to form by the City Attorney.
- (b) Each user shall be responsible for the construction, maintenance and repair of his or her house sewer line. Each user shall be liable for damages which may result to the sewage system from his or her failure to keep his or her house sewer line in good order. A City inspector shall be admitted at all reasonable hours to all parts of any premises connected with the sewage system for purposes of checking the house sewer line and all fixtures and facilities connected thereto.
- (c) When a sewer connection fee is paid for a particular parcel, it shall be credited to subsequent owners of that parcel. Refunds shall be made for duplicate payments. Additional fees will be required where there are zoning, use density changes that will increase the fees.

#### **5-6.701. ENFORCEMENT RESPONSIBILITIES.**

The City Manager shall ensure enforcement of this chapter by coordinating the actions of the Finance Director, the Public Works Director, and any other City departments concerned with implementing and enforcing the City's Enforcement Response Plan. The Public Works Director is hereby charged with the enforcement of all of the provisions of this chapter.

#### **5-6.805. CONSTRUCTION OF NEW SEWER LATERALS.**

Any person within the Sewer District may connect his/her property to the City sewage system by construction of a new sewer main under one of the following methods and constructing building lateral connecting the property to a sewer main:

- (a) **By Improvement District Proceedings.** Sewer mains may be financed by the formation of assessment districts and sale of improvement bonds in accordance with existing State laws governing the formation of such districts and the sale of such bonds.
- (b) **By Private Contract: Undeveloped Land.** The owner of any undeveloped subdivision, tract, area or lot within the Sewer District may make private arrangements for the construction of sewer mains to serve such subdivision, tract, area or lot in accordance with plans and specifications prepared by a registered engineer and approved by the City, at his/her own expense, and by employing a licensed contractor to perform the work. The owner shall reimburse the City for costs incurred by it in the inspection of the work in accordance with a Schedule of Fees approved by the Council from time to time by resolutions and on file in the offices of the City Clerk and Public Works Director.
- (c) **By Private Contract: Developed Land.** The owner of any developed subdivision, tract, area or lot within the Sewer District may make private arrangements for the construction of sewer mains to serve such subdivisions, tract, area or lot in accordance with plans and specifications prepared by a registered engineer and approved by the City, or in accordance with plans and specifications prepared by the City Engineer and by employing a licensed contractor to perform the work. The owner shall reimburse the City for costs incurred by it for any preparation of plans and specifications and for inspection of the work in accordance with a Schedule of Fees approved by the Council from time to time by resolution and on file with the City Clerk and Public Works Director.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3365-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> day of November, 2004, Councilmember Hawn, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: December 23, 2004

ORDINANCE NO. 3366-C.S.

AN ORDINANCE AMENDING SECTIONS 7-1.102, 7-1.104, 7-1.105, 7-1.106, 7-1.108, 7-1.110, 7-1.201, 7-1.301, 7-1.304, 7-1.401, 7-1.404, 7-1.502, 7-1.503, AND 7-1.701 OF CHAPTER 1 OF TITLE 7 OF THE MODESTO MUNICIPAL CODE RELATING TO STREET IMPROVEMENTS; SECTION 7-2.02 OF CHAPTER 2 OF TITLE 7 OF THE MODESTO MUNICIPAL CODE RELATING TO STREET CUTS; SECTIONS 7-3.103 AND 7-3.202.1 OF CHAPTER 3 OF TITLE 7 OF THE MODESTO MUNICIPAL CODE RELATING TO MODESTO CITY-COUNTY AIRPORT; AND SECTIONS 7-5.01, 7-5.02, 7-5.03, 7-5.04, 7-5.05, 7-5.06, 7-5.08 AND 7-5.10 OF CHAPTER 5 OF TITLE 7 OF THE MODESTO MUNICIPAL CODE RELATING TO STREET TREES. (REORGANIZATION OF DEPARTMENTS)

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Sections 7-1.102, 7-1.104, 7-1.105, 7-1.106, 7-1.108, 7-1.110, 7-1.201, 7-1.301, 7-1.304, 7-1.401, 7-1.404, 7-1.502, 7-1.503, and 7-1.701 of Chapter 1 of Title 7 of the Modesto Municipal Code are hereby amended to read as follows:

**7-1.102. DEFINITIONS.**

- (a) **Curbline.** "Curbline" is the line established by the curb face of a curb and gutter section. In those areas where curb and gutter do not exist, the Public Works Director shall determine the location of the curb and gutter from which the curbline will be established.
- (b) **Driveway.** "Driveway" is the area required for vehicular access to a property across the sidewalk-planting strip.
- (c) **Encroachment.** An "encroachment" is any permanent or temporary structure or appurtenance thereto, fence, hedge, planter, shrub, sprinkler system or any other thing which intrudes into, upon, over or under, or invades the sidewalk-planting strip.

- (d) **Planting Easement.** "Planting easement" is that portion of land made available as a public easement for the purpose of planting and maintaining City street trees.
- (e) **Planting Strip.** "Planting strip" is that portion of the sidewalk-planting strip not required for sidewalk, driveway or curb use.
- (f) **Sidewalk.** "Sidewalk" is that portion of the sidewalk-planting strip established for pedestrian use. In those areas where a sidewalk does not exist, the Public Works Director shall define the location of the sidewalk area.
- (g) **Sidewalk-planting Strip.** As used in this chapter, "sidewalk-planting strip" is that portion of the street between the property line and the curblin.
- (h) **Street.** "Street" is a thoroughfare which has been dedicated to or acquired by the public and which affords the principal means of access to abutting property; provided that utility and planting easements, walkways and alleys shall not be considered as streets for the purpose of this chapter.

#### **7-1.104. ENCROACHMENTS IN SIDEWALK-PLANTING STRIP.**

- (a) It shall be unlawful and punishable as an infraction for any person, firm or corporation to place, erect or maintain or to permit the placing, erection, maintenance or existence of any encroachment, as hereinabove defined, upon, over or under the sidewalk-planting strip, without an encroachment permit from the City of Modesto, granted as herein provided, unless such an encroachment is specifically allowed by Section 7-1.103 of this article.
- (b) Any person, firm or corporation desiring to place, erect or maintain an encroachment in the sidewalk-planting strip which is not specifically allowed by Section 7-1.103 of this article shall make application for an encroachment permit at the office of the Public Works Director. The application shall be in writing on a form furnished by the City for that purpose and shall specify the information set forth in Section 7-1.106 of this article.
- (c) The Public Works Director may issue permits for encroachments in the sidewalk-planting strip in accordance with resolutions passed by the Council from time to time which establish conditions under which the permit may be issued. In each case, the applicant shall agree in writing to the conditions of the permit. In the event that the Council has not

established conditions for a particular type of encroachment, the application shall be submitted to the Council for action.

- (d) The Council may require removal of any encroachment or may revoke any encroachment permit at any time. The Public Works Director shall give notice to remove or of revocation in the form and manner specified in subsection (h) of this section to the person maintaining said encroachment.
- (e) Any person, firm or corporation whose property encroaches in any manner upon, over or under the sidewalk-planting strip, who is required to and has not obtained a permit for the placing, erection and/or maintenance of such encroachment, shall remove the same after written notice by the Public Works Director.
- (f) In case of an immediate hazard or danger, the Public Works Director may cause such an encroachment to be summarily removed without notice.
- (g) It shall be unlawful for a person, firm or corporation to place, erect or maintain or to permit the placing, erection, maintenance or existence of an encroachment upon, over or under the sidewalk-planting strip if an encroachment permit is required and has not been obtained, has expired or has been revoked and the time specified in the notice from the Public Works Director for removal of the same has expired.
- (h) Notice of such removal shall be by registered or certified mail, addressed to the post office address of the owner or occupant of the premises where the encroachment exists, or by personal service of such notice upon the owner or occupant by a person authorized by the Public Works Director to deliver such notice. The time required for removal of such encroachment shall be specified in the notice.

#### **7-1.105. PERMIT REQUIRED.**

It shall be unlawful for any person to construct, repair or remove, or cause to be constructed or repaired or removed, in the City, any sidewalk, driveway, curb or curb and gutter without first obtaining a permit from the Public Works Director to do so. In no case, however, shall a permit be granted to construct sidewalks, curbs or curbs and gutters when the Council has instituted improvement proceedings under the general laws of the State relating to such work.

**7-1.106. APPLICATION FOR PERMIT.**

Any person desiring a permit for the construction, repair or removal of any curb, gutter, sidewalk or driveway, or an encroachment, shall file with the Public Works Director an application therefor in writing on a form furnished by the City for that purpose. Such forms shall specify the following:

- (a) The name and address of the applicant;
- (b) The location of the property at which the proposed construction, removal, repair or encroachment is to be made or installed;
- (c) The name of the person who will perform the work;
- (d) The nature and dimensions of the proposed work; and
- (e) Such additional information as the Public Works Director may require.

**7-1.108. FEES.**

All fees for services performed by City personnel, as required by this chapter, shall be in accordance with a schedule of fees approved by the Council from time to time by resolutions and on file in the offices of the City Clerk and Public Works Director.

**7-1.110. POSTING OF BOND.**

If permittee fails, in the opinion of the Public Works Director, to comply with the provisions hereof or the conditions of any permit, the Director may refuse to grant and may withhold issuance of any subsequent permits to permittee until the latter has paid all costs due City for prior permits and has posted with the City a cash bond in the sum of five hundred dollars (\$500.00), which bond or any part thereof shall be used as follows:

- (a) To pay the actual cost of work completed by the Public Works Director in connection with any permit issued, including overhead costs.
- (b) To pay the actual cost of work done by the Public Works Director to repair or restore any public improvements damaged or destroyed by permittee during the course of any operations performed under any permit, including overhead costs.

- (c) To pay the actual cost of placing lighted barricades placed on or about the permittee's work, including overhead costs, and the costs of the furnishing by City of any other safety barricades or warnings in connection with any permit issued.

**7-1.201. STANDARDS.**

Curbs and gutters shall be constructed or repaired in accordance with current standard drawings and specifications approved by the Council from time to time by resolution and on file in the offices of the City Clerk and Public Works Director.

In addition to said standards, all curbs and gutter construction or repair shall comply with the following regulations:

- (a) All curb and gutter construction or repair shall be under the direction, supervision and to the satisfaction of the Public Works Director.
- (b) All debris and surplus materials shall be removed promptly upon the completion of the work.
- (c) When curb and gutter is constructed in areas where there is no sidewalk, the area behind the curb and gutter shall be graded as shown on the standard drawings.
- (d) Applicant shall maintain the premises in a safe manner, shall provide adequate barricades and lights at his/her own expense to protect the safety of the public using the adjacent street or sidewalk area, and shall hold the City free and harmless from any and all damages or liability incurred because of his/her operations.

**7-1.301. STANDARDS.**

Sidewalks on public rights-of-way shall be constructed or repaired in accordance with current standard drawings and specifications as approved by the Council from time to time by resolution and on file in the offices of the City Clerk and Public Works Director.

In addition to said standards, all sidewalk construction or repair shall comply with the following regulations:

- (a) All sidewalk construction or repair shall be done under the direction, supervision and to the satisfaction of the Public Works Director.

- (b) All debris and surplus materials shall be removed promptly upon completion of the work.
- (c) The applicant shall maintain the premises in a safe manner, and shall provide adequate barricades and lights at his/her own expense to protect the safety of the public using the adjacent street or sidewalk area, and shall hold the City free and harmless from any and all damages or liability incurred because of his/her operations.

**7-1.304. NOTICE OF SIDEWALK DEFECTS.**

If a public sidewalk abutting or on an owner's property appears to be in a condition which is dangerous to people using the sidewalk, that property owner shall give prompt written notice of that sidewalk condition to the City of Modesto's Public Works Director. If the property owner fails to properly notify the City of such a condition, the property owner shall be liable for damages or injuries caused by the condition of the sidewalk.

**7-1.401. STANDARDS.**

Driveways shall be constructed or repaired in accordance with current standard drawings and specifications approved by the Council from time to time by resolution and on file in the offices of the City Clerk and Public Works Director.

In addition to said standards, driveway construction or repair shall comply with the regulations set forth below. For purposes of such regulations, all measurements of driveways adjacent to vertical curbs shall be made at the top of the curbing, and all measurements of driveways adjacent to drive-over curbs shall be made at the property line.

- (a) The maximum width of any driveway adjacent to a vertical curb shall not be more than forty-one (41) feet. The maximum width of any driveway adjacent to a drive-over curb shall not be more than thirty-five (35) feet.
- (b) The minimum distance between driveways serving the same lot or parcel of land shall not be less than twenty (20) feet.
- (c) The total width of any driveway serving any lots or parcels of land in a single ownership shall not exceed the following limits:
  - (1) For frontages having a vertical curb, the limit shall be fifty (50) percent of the street frontage of the property or forty-one (41) feet, whichever is greater.

- (2) For frontages having a drive-over curb, the limit shall be fifty (50) percent of the street frontage of the property or thirty-five (35) feet whichever is greater.

In the case of lots or parcels fronting on more than one (1) street, the calculation for driveways on a given street shall be based only on the frontage of that street.

- (d) No driveway shall be so located that it interferes with intersecting sidewalks, traffic signals, lamp standards, fire hydrants, or other public improvements unless specific approval is given by the Public Works Director and the necessary adjustments to sidewalks, traffic signals, light standards, fire hydrants, or other public improvements or installations are accomplished without cost to the City.
- (e) All work shall be done under the supervision of the Public Works Director and in accordance with City standards and specifications in effect at the time of such work. All debris and surplus materials shall be promptly removed upon the completion of such work.
- (f) Applicant shall maintain the premises in a safe manner and shall provide adequate barricades and lights at his/her own expense to protect the safety of the public using the adjacent streets or sidewalks and shall hold the City free and harmless from any and all charges or damages or liability incurred because of his/her operation.
- (g) The Public Works Director may grant variances from these standards in accordance with resolutions passed by the Council from time to time which establish conditions under which variances may be granted. In each case the applicant shall agree in writing to the conditions of the variance. In the event that the Council has not established conditions for a particular type of variance, the application shall be submitted to the Council for action. A variance granted pursuant to this subsection is revocable at any time by the Council.
- (h) The Council shall have the authority to rescind any permit heretofore or hereafter granted for a driveway when it finds such action to be in the public interest. Such driveways shall be removed and replaced as provided in Section 7-1.404 of this article.

#### 7-1.404. REPLACEMENT OF DRIVEWAYS.

- (a) **When Required.** Driveways which are no longer required for reasonable vehicular access to the property served shall be removed and standard curb, gutter and sidewalk installed by the property owner. When the Public Works Director finds that driveways which have been constructed are no longer so required, he/she may notify the owner or person in possession of the property to remove said driveway and to replace the driveway opening with standard curb and gutter. Notice to replace may be given by delivering a written notice personally to the owner of the property, or by mailing said notice to the owner thereof at his/her last known address as the same appears on the assessment rolls.
- (b) **Form of Notice.** The notice shall specify what work is required to be done, and what materials shall be used in construction, and shall further specify that if construction is not commenced within thirty (30) days after notice is given, and diligently and without interruption prosecuted to completion, the Public Works Director shall cause the construction to be done and the cost of the same shall be a lien on the property.
- (c) **Construction by Public Works Director.** If the construction is not commenced and prosecuted to completion with due diligence, the Public Works Director shall forthwith perform the necessary work to remove the driveway and eliminate the curb cut.
- (d) **Collection of Cost of Construction.** Upon completion of the work, the Public Works Director shall notify the property owner and the Finance Director of the cost of construction. The Finance Director shall bill the property owner for the cost of the work and if the amount thereof is not paid within thirty (30) days from the date of billing, he/she shall record a notice of lien against the parcel of property fronting upon the curb so constructed, which lien shall continue until the cost has been paid.

The notice of lien may include claims against one (1) or more separate parcels of property, whether contiguous or not, together with the amount due, respectively for each such parcel.

- (e) **Notice of Lien.** The notice of lien shall be delivered by the Finance Director to the County Auditor who shall enter the amount thereof on the County assessment book opposite the description of the particular property and the amount shall be collected together with all other taxes thereon against the property. The notice of lien shall be delivered to the County

Auditor before the date fixed by law for the delivery of the assessment book to the County Board of Equalization.

- (f) **Manner of Collection of Lien.** Thereafter the amount of the lien shall be collected at the same time and in the same manner as ordinary City taxes are collected, and shall be subject to the same penalties and interest and to the same procedure under foreclosure and sale in case of delinquency as provided for ordinary City taxes.
- (g) **Exemptions.** The provisions of this section shall not apply to driveways which were constructed prior to July 9, 1959, and for which a curb replacement fee was paid.

#### **7-1.502. REQUIRED LOCATIONS.**

Curbs, gutters, sidewalks, driveway approaches and alley improvements shall be provided and/or repaired along all street and alley frontages of property in accordance with current standard drawings and specifications approved by the Council from time to time by resolution and on file in the offices of the City Clerk and Public Works Director for all new buildings or structures, property development, or any building or structure altered or expanded in excess of fifty (50) percent of the value of such building or structure or for any building or structure in which there is a change from a lesser to a more restrictive occupancy where a building permit is required, with the following exceptions:

- (a) Sidewalks shall be required in the Low Density Residential (R-1) Zone and Medium Density Residential (R-2) Zone only when one of the following conditions exists as to the front footage on the side of the block on which the property is located:
  - (1) More than fifty (50) percent of the front footage has sidewalks which are existing or are to be installed under some proceeding or requirement of law.
  - (2) More than fifty (50) percent of the front footage is undeveloped property.
  - (3) More than fifty (50) percent of the front footage cumulatively has sidewalks or is undeveloped property as set forth in subsections (a)(1) and (2) above.
- (b) In commercial or manufacturing zones, as defined in Title 10 of this Code, sidewalks, curbs, gutters, driveway approaches and alley improvements

shall be provided and/or repaired, except that in C-M, M-1 and M-2 Zones, special permits may be issued to omit the sidewalk upon approval of the Council.

- (c) On large sized properties on which only a portion of the property is to be occupied by the construction of a building, structure or property development, the providing and/or repairing of sidewalks, curbs, gutters, driveway approaches and alley improvements may be confined, upon approval of the Public Works Director, to that portion of the street and alley frontage abutting the portion of the property being developed, including areas used for parking or motor vehicles.

#### **7-1.503. APPROVAL BY THE CHIEF BUILDING OFFICIAL.**

The Chief Building Official shall deny final approval of any building or its occupancy until the work required by this article is completed or construction is guaranteed within a specified time limit approved by the Public Works Director by an improvement security in the form of cash, a savings and loan certificate, or an instrument of credit. If the person required to make improvements pursuant to this section can prove to the satisfaction of the Public Works Director that providing improvement security would result in a severe hardship and the failure to provide improvements would not be detrimental to the public health, safety or welfare, the Director may grant a waiver to the improvement requirements. The waiver may be conditioned to require dedication and/or improvement at a later date. Improvement security shall be approved by the City Attorney and the Finance Director in an amount to be fixed by the Public Works Director. The improvement security shall be returned to the depositor upon the completion of the work. In the event the work is not completed within the specified time limit, the City may perform the required work, in which case the improvement security shall be applied by the City toward the cost of the work.

#### **7-1.701. STREET DEDICATION AND IMPROVEMENT.**

- (a) Except as provided in subsection (c) below, no building or structure shall be constructed or enlarged, and no building permit for such shall be issued, until sufficient right-of-way as determined by the Public Works Director or designee for the street(s) abutting the property has been dedicated and improved or the dedication and improvement has been insured to the satisfaction of the Public Works Director or designee.
- (b) No building or structure shall be constructed or enlarged, and no building permit for such shall be issued until any traffic impact study and mitigation measures which are required pursuant to criteria adopted from

time to time by City Council resolution are submitted and determined to be acceptable by the Public Works Director or designee and until said mitigation measures have been installed, constructed, or bonded for to the satisfaction of the Public Works Director or designee.

(c) The dedication and/or improvement required by subsection (a) above shall be limited as follows:

- (1) The maximum area required to be dedicated shall not exceed twenty-five (25) percent of the lot area.
- (2) No dedication shall be required of a portion of a lot containing a main building.
- (3) No additional improvements shall be required if complete roadway, curb, gutter, sidewalk and street lights exist within the existing right-of-way.
- (4) For minor expansions or reconstruction in any twenty-four-month period which cumulatively Adding less than twenty-five (25) percent additional floor space, no additional dedication or improvement shall be required.
- (5) If the person required to make a dedication or improvement pursuant to subsection (a) can prove to the satisfaction of the Public Works Director that the application of subsection (a) would result in a severe hardship and the failure to obtain dedication and/or improvement would not be detrimental to the public health, safety or welfare, the Public Works Director may grant a waiver to either the dedication and/or improvement requirements. The waiver may be conditioned to require dedication and/or improvement at a later date.

(d) **Dedication procedure.**

- (1) Any person required to dedicate land shall make an offer to dedicate in writing properly executed by all parties of interest. Such offer shall be on a form approved by the City Attorney, be in such terms as to be binding on the owners, their heirs, assigns or successors in interest; and shall continue until the City accepts or rejects such offer or until one (1) year from the date such offer is filed with the Public Works Director for processing, whichever occurs first. The offer shall provide that the dedication will be

complete upon acceptance by the City. The offer shall be recorded by the City in the Office of the County Recorder of Stanislaus County upon its acceptance by the Public Works Director. The offer shall be promptly processed by the City departments concerned, in order to complete the dedication within one (1) year. If the offer is rejected by the City or not processed within one (1) year, the City Clerk shall issue a release from such offer which shall be recorded in the Office of the County Recorder unless the parties making the offer wish to have the time extended.

- (2) For purposes of this section, dedication shall be considered as satisfactorily assured when the Public Works Director accepts for recordation the offer to dedicate.

(e) **Improvement procedure.**

- (1) Any person required to make improvements or mitigations by the provisions of this section shall complete them to the satisfaction of the Public Works Director or shall, prior to issuance of the building permit, file a bond with the City in such an amount as the Public Works Director shall estimate and determine to be necessary to complete all of the improvements or mitigations required before the issuance of a certificate of occupancy by the Chief Building Official.
- (2) Such bond may be either a cash bond, savings and loan certificate or a bond executed by a company authorized to act as a surety in this State. The bond shall be payable to the City and be conditioned upon the faithful performance of any and all work required to be done, and that should such work not be done or completed within the time specified, the City may, at its option, cause the same to be done or completed; and the parties executing the bond shall be firmly bound under a continuing obligation for the payment of all necessary costs and expenses incurred in the construction thereof. The bond shall be executed by the owner of the lot as principal, and if a surety bond, shall also be executed by a corporation authorized to act as a surety under the laws of the State.
- (3) Whenever the owner elects to deposit a cash bond, or savings and loan certificate, the City is authorized, in the event of any default on the owner's part, to use any or all of the deposit money to cause all of the required work to be done or completed, and for payment

of all costs and expenses therefor. Any money remaining shall be refunded to the owner.

- (4) When a substantial portion of the required improvement or mitigation has been completed to the satisfaction of the Public Works Director and the completion of the remaining work is delayed due to conditions beyond the owner's control, the Public Works Director may accept the completed portion and consent to a proportionate reduction of the surety bond in an amount estimated and determined by the Public Works Director to be adequate to assure the completion of the required work remaining to be made.
  - (5) Whenever a surety bond has been filed in compliance with this section, the City is authorized, in the event of any default on the part of the principal, to enforce collection, under such bond, for any and all damages sustained by the City by reason of any failure on the part of the principal faithfully and properly to do or complete the required improvements, and in addition may cause all of the required work to be done or completed, and the surety upon the bond shall be firmly bound for the payment of all necessary costs.
  - (6) The term of the bond shall begin on the date of the deposit of the cash or savings and loan certificate or the filing of the surety bond, and shall end upon the date of the completion to the satisfaction of the Public Works Director of all improvements or mitigation required to be made. The fact of such completion shall be endorsed by a statement thereof signed by the Public Works Director and the deposit shall be returned to the owner, or the surety bond may be exonerated at any time thereafter.
  - (7) For the purposes of this section, improvements or mitigation shall be considered as satisfactorily assured when the City accepts the cash or surety bond or the improvements or mitigation required to be made have been completed to the satisfaction of the Public Works Director.
- (f) **Issuance of building permits after certification of dedication and improvement.** When all dedication, improvements and mitigation required by this section have been completed or satisfactorily assured, a building permit may be issued.

- (g) **Fees waived.** Notwithstanding any other provisions of this Code to the contrary, no fee shall be charged for the rendering of any service by the City in connection with any dedication, improvement or mitigation required by the provisions of this section and not a part of a subdivision or parcel map proceeding.
  
- (h) **Lots affected by street widening.** On a lot which is affected by street widening required by the provisions of this section, all required yards, setbacks, parking area, loading space and building locations for new buildings or structures or additions to buildings or structures shall be measured and calculated from the new lot lines being created by said widenings; provided, however, that for the purpose of establishing the required front yard depth on a frontage where the ultimate street line has been determined under the provisions of this section, the depths of all existing front yards may be measured from the ultimate street line instead of the front lot line. In applying all other provisions of this chapter, the area of the lot shall be considered as that which existed immediately prior to the required street widening.
  
- (i) **Improvement standards.**
  - (1) All State highways, major, collector and industrial streets shall be constructed and improved in accordance with the Standard Plans and Specifications of the City.
  - (2) The City Engineer may approve variations and deviations from the above requirements as he/she determines are made necessary by the conditions of the terrain and the existing improvements contiguous to the property.
  
- (j) **Appeal.**
  - (1) Any person required to dedicate land or make improvements or mitigation under the provisions of this section may appeal any determination made by the City Engineer in the enforcement or administration of the provisions of this section to the Council. The appeal shall be made in writing, and shall state in clear and concise language the grounds therefor.
  - (2) The Council may make modifications in the requirements of this section or may grant waivers or modifications of the determinations which are appealed to them as they shall determine are required to prevent any unreasonable hardship under the facts

of each case so long as each modification or waiver is in conformity with the general spirit and intent of the requirements of this section.

- (k) **City may share cost of making unusual improvements.** Under proper application to the Council and upon recommendation of the Public Works Director, the City may accept and provide for contribution toward the cost of making any improvement required by the provisions of this section which the Public Works Director determines will cost any amount greatly in excess of the cost to other property owners who are required to make improvements under the provisions of this section in the immediate vicinity.
- (l) **City Engineer to determine street alignment.** Whenever uncertainty exists as to the proper application of the provisions of this section in the matter of street alignment, the Public Works Director shall determine this application in conformity with the spirit and intent of this section.
- (m) **Written notification to permit applicants required.** When the Public Works Director determines that the provisions of this section are applicable to any building permit application, the Public Works Director shall inform the permit applicant of his/her determination of the specific requirements of this section which he/she determines to be applicable and of the availability and procedure for appeal of his/her determination to the Council.

SECTION 2. AMENDMENT OF CODE. Section 7-2.02 of Chapter 2 of Title 7

of the Modesto Municipal Code is hereby amended to read as follows:

**7-2.02. DEFINITIONS.**

For the purposes of this chapter, the following definitions apply:

- (a) **"Applicant"** shall mean any owner, or contractor, who has submitted an application for a permit to excavate.
- (b) **"Chapter"** shall mean this Chapter 2 of Title 7 of the Modesto Municipal Code.
- (c) **"City"** shall mean the City of Modesto.

- (d) **"City street"** shall mean any public highway, road, street, avenue, alley, lane, drive, way, place, court or trail, which has been accepted, or is hereafter accepted, by the City Council into the City road system pursuant to Section 941 of the California Streets and Highways Code.
- (e) **"Crack"** shall include any crack with a measurable opening in the pavement of one-fourth (1/4) of an inch or more.
- (f) **"Department"** shall mean the Public Works Department.
- (g) **"Director"** shall mean the Public Works Director or his or her designee.
- (h) **"Excavation"** shall mean any opening in the paved surface or subsurface of the public right-of-way in excess of four (4) square feet or four (4) feet long, whichever is smaller.
- (i) **"Facility"** or **"facilities"** shall mean any and all cables, cabinets, ducts, conduits, converters, equipment, drains, handholds, manholes, pipes, pipelines, splice boxes, surface location markers, tunnels, utilities, vaults, wells, and other appurtenances or tangible things that are located or are proposed to be located in the public right-of-way.
- (j) **"Major project"** shall mean the installation or replacement of any underground facility other than a service.
- (k) **"Owner"** shall mean any person, including any agency, department, or subdivision of the City, who owns, or maintains, any facility or facilities that are, or are proposed, to be installed or maintained in the public right-of-way.
- (l) **"Permit"** or **"permit to excavate"** shall mean a permit to perform an excavation as it has been approved or may be amended or renewed by the Department.
- (m) **"Person"** shall mean one or more natural persons, any corporation, partnership, or other business or enterprise, or any governmental agency, department, or subdivision of the City, of the State of California, or United States of America.
- (n) **"Pothole"** shall mean any excavation less than four (4) square feet of any depth necessary to locate a subsurface utility, facility or structure. The structure of a pothole shall be such that the vertical alignment of the sides of the excavation shall not exceed that of the surface cut.

- (o) **"Public right-of-way"** shall mean the area across, along, beneath, in, on, over, under, upon, and within the City streets, as they now exist or hereafter will exist, including any associated public utility easements, and which are under the permitting jurisdiction of the Public Works Department.
- (p) **"Street cut"** shall mean the action of or the result of opening, tearing up, excavating, repairing, installing, adding to, removing or otherwise altering any portion of any public roadway, street, alley or thoroughfare for any purpose whatsoever.
- (q) **"Structural overlay"** shall mean any repaving, overlay, seal or reconstruction which constructs a new pavement surface of greater than one (1) inch thickness over the entire width of the street, excluding crack seals, and not including micropaving, Class 1 to 3 slurry seals, cape seals, and chip seals.
- (r) **"Surface irregularity"** shall mean any hump or settlement such that the surface shall have no irregularity greater than three-eighths (3/8) of an inch in ten (10) feet in any direction.
- (s) **"Trench failure"** shall mean any condition that causes surface irregularities, cracking, severe spalling or raveling of the patch area, surface buckling, upheaval, frac-outs and other failures resulting from trenchless excavation methods.
- (t) **"Trench influence area"** shall mean an area four (4) feet adjacent to the trench where the excavation is greater than four (4) feet in depth, or an area two (2) feet adjacent to the trench where the excavation is four (4) feet or less in depth.

SECTION 3. AMENDMENT OF CODE. Sections 7-3.103 and 7-3.202.1 of

Chapter 3 of Title 7 of the Modesto Municipal Code are hereby amended to read as follows:

**7-3.103. DIVISION OF PUBLIC WORKS DEPARTMENT.**

The Modesto City-County Airport shall be a division of the Public Works Department of the City. The Airport Manager shall carry out his/her duties under the supervision and direction of the Public Works Director.

**7-3.202.1. PARKING AND OPERATION OF MOTOR VEHICLES.**

- (a) No person shall operate, drive or park a motor vehicle in the aircraft tiedown areas as designated by the Airport Manager.
- (b) The parking regulations promulgated for municipal off-street parking facilities by Article 16 of Chapter 2 of Title 3, Section 3-2.1601 et seq., of this Code are hereby adopted by reference and are made applicable to all off-street parking facilities at the Modesto City-County Airport, except that the term "Director" as used in that article shall refer to Public Works Director.

SECTION 4. AMENDMENT OF CODE. Sections 7-5.01, 7-5.02, 7-5.03, 7-5.04, 7-5.05, 7-5.06, 7-5.08 and 7-5.10 of Chapter 5 of Title 7 of the Modesto Municipal Code are hereby amended to read as follows:

**7-5.01. DEFINITIONS.**

For the purpose of this chapter the words and phrases used herein shall have the following meaning unless the context shows a different meaning:

- (a) "**Department**" shall mean the Public Works Department.
- (b) "**Director**" shall mean the Public Works Director.
- (c) "**Street Tree Plan**" shall mean an official adopted plan for the planting of certain varieties of trees in public rights-of-way or planting easements within the City.
- (d) "**Official Street Trees**" shall be those specified in the Street Tree Plan.
- (e) "**Right-of-way**" shall mean that portion of the public street right-of-way between the curb, or curb line, and the adjacent property line used for the purpose of planting and maintaining City street trees.
- (f) "**Planting Easement**" shall mean that portion of land made available as a public easement for the purpose of planting and maintaining City street trees.
- (g) "**Maintain**" or "**Maintenance,**" when used in reference to street trees, shall mean and include pruning, spraying, mulching, fertilizing,

cultivating, supporting, treating for disease or injury, promoting public safety, or any other similar act which promotes the life, growth, health or beauty of street trees not to include the control of vertebrate pests.

- (h) **"Street Tree"** shall mean any tree whose center of trunk at ground level is within the right-of-way or planting easement.

#### **7-5.02. STREET TREE PLAN.**

The Public Works Department, in cooperation with the Community Development Department, shall prepare or have prepared a Street Tree Plan. Such plan, when approved by the City Manager, shall be submitted to the Planning Commission, which shall review said plan and submit its recommendations thereon to the Council. After making any revisions thereto which it may deem advisable, the Council shall adopt such plan by resolution. The Public Works Director shall, from time to time, recommend any revisions thereto. Amendments to the plan shall be made in the same manner as the original adoption. Said plan shall include the types, varieties, and locations of street trees to be planted. Said plan shall include type of trees to be planted in commercial, industrial and neighborhood zones. The types of trees shall be divided into general varieties which may be modified at the discretion of the Public Works Director.

#### **7-5.03. RESPONSIBILITIES, DUTIES AND AUTHORITY OF THE DIRECTOR.**

The Public Works Director, under the general supervision of the City Manager, shall have the authority and responsibility to do the following:

- (a) Carry out the provisions of this chapter.
- (b) Remove or replace any tree located within a planting right-of-way or easement, in accordance with the provisions of this chapter.
- (c) Enter in or upon any part of a right-of-way or easement or adjacent property as is reasonably necessary for the purpose of planting and maintaining street trees.

#### **7-5.04. PLANTING AND MAINTENANCE.**

- (a) Except as otherwise provided in this section, within the limits of funds provided in the City budget, the City will supply, replace, and plant approximately one (1) tree per lot, excepting corner lots, where two (2) or

three (3) trees will be planted, and maintain street trees in all rights-of-way and planting easements within the City.

- (b) Fees shall be charged to provide the cost of furnishing, locating, planting and fertilizing street trees as provided in Section 4-4.803.1 of Article 8 of Chapter 4 of Title 4 of this Code.
- (c) The City, by mutual agreement, may provide and plant street trees in subdivisions outside of the City at a fee to be established by resolution of the Council, which fee shall not be less than that charged within the City.
- (d) No maintenance of street trees will be provided by the City in areas not within the City except by special agreement nor on privately owned property except in rights-of-way or public planting easements.
- (e) The property owner or occupant, as the case may be, shall be responsible for watering street trees located in rights-of-way or easements abutting said property.
- (f) This section shall not prevent any person, firm or public utility from installing and maintaining any overhead wires or underground pipes or conduits lawfully on, over or under public streets or public rights-of-way, subject to the provisions and requirements of Chapter 4 of Title 4 of this Code. The Public Works Director, when reviewing plans for planting, maintenance or removal of street trees, shall consider the effect upon existing overhead wires or underground pipes or conduits and shall avoid unnecessary disturbance to or relocation of said facilities.

#### **7-5.05. REMOVAL AND MAINTENANCE.**

- (a) The Public Works Director shall be responsible for inspection, maintenance, removal and replacement of street trees planted within rights-of-way or easements. The Public Works Director may cause street trees or other plant material planted in a right-of-way or easement to be removed by the City if they are deemed by the Public Works Director to be unhealthy, hazardous, undesirable or causing excessive damage to existing public improvements, or street trees.
- (b) The Public Works Director shall have the authority to require property owners to take such action as is necessary to control insects, scales, parasites, fungus, and other injurious pests or plant material that would cause serious injury to street trees and other plant material within the City. The City shall notify the property owner in writing, describing the

conditions and stating the control necessary to correct the condition, and establishing a reasonable time within which the corrective steps shall be taken.

- (c) The Public Works Director shall have the authority to require property owners to remove or prune any privately planted tree, shrub, vine, or other plant material if it is determined by the Public Works Director to be seriously interfering with the growth and health of any street tree.
- (d) In the event a property owner desires to remove a tree from the right-of-way or easement abutting his/her property, he/she or his/her authorized agent shall make application to the Department. The Public Works Director shall determine whether or not such tree is required to be retained in order to preserve the intent and purpose of the Street Tree Plan. In making his/her determination, the Public Works Director shall consider the inconvenience or hardship which retention of the tree would cause the property owner, and consider also the condition, age, desirability of variety and location of the tree. If the Public Works Director finds that the tree may be removed without violating the intent and spirit of the Street Tree Plan, he/she may authorize the property owner to remove such tree at his/her own expense and liability. If a permit is granted for removal of a street tree, all removal work shall be completed within sixty (60) days from the date of issuance of the permit, and shall be under the general supervision of, and in accordance with, rules established by the Public Works Director. All tree stumps shall be removed to a depth specified by the Public Works Director. All removal permits shall be void after the expiration of sixty (60) days from the date of issuance, unless extended by the Public Works Director.

#### **7-5.06. PROTECTION.**

- (a) No person shall remove, trim, prune, spray, or cut any above- or below-ground portions of any street tree in a right-of-way or easement without first obtaining permission from the Public Works Director.
- (b) No person shall interfere or cause any person to interfere with any work being done under the provisions of this chapter by any employee of the City, or by any person or firm doing work for the City or under a permit granted by the City.
- (c) No person shall interfere or cause anyone to interfere with or damage any overhead wires or underground pipes or conduits while removing, trimming, pruning, spraying, or cutting any street trees in a right-of-way or

easement. The owner of such facilities shall be notified when such work may interfere with or cause damage to the facilities. The cost of repair of the damage to overhead wires, underground pipes or conduits shall be the responsibility of the person, firm or corporation doing or causing the work to be done. The City of Modesto and its officers and employees shall be exempt from the provisions of this subsection.

- (d) It shall be unlawful for any person to injure or destroy by any means any tree planted or maintained by the City in rights-of-way or easements, including, but not limited to, the following:
- (1) Constructing a concrete sidewalk or driveway or otherwise filling up the ground around any street tree so as to shut off air or water from its roots.
  - (2) Piling building materials, equipment, or other substance around any tree.
  - (3) Pouring any deleterious material on any tree or on the ground near any tree.
  - (4) Posting any sign, poster, notice, or other object on any tree, tree stake or guard, or fastening any guy wire, cable, rope, nails, screws, or other device to any tree, tree stake or guard.
  - (5) Causing or encouraging any fire or burning near or around any tree.
  - (6) Using any mechanical weeding device against a tree.
  - (7) Constructing retaining walls, fences, or other similar improvements which prohibit the planting or maintaining of street trees or otherwise affect their growth.
  - (8) Operating construction equipment in such a manner to cause it to contact the tree.
  - (9) Disrupt the anchorage of the tree or change the grade around the tree.
- (e) No person shall plant a tree or other plant material in a right-of-way or easement other than lawn or other similar planting materials, unless approved by the Public Works Director.

**7-5.08. COOPERATION WITH OTHER DEPARTMENTS AND AGENCIES.**

- (a) Any public utility maintaining any overhead wires or underground pipes or conduits shall obtain permission from the Public Works Director before performing any maintenance to said wires, pipes, or conduits, which would cause injury to street trees. Said public utility shall in no way injure, deface, prune, or scar any street tree until their plans and procedures have been approved by the Public Works Director.
- (b) The Public Works Director shall be permitted to inspect any and all maintenance or operational work performed by public utilities which might affect street trees. During the performance of said work, if in the opinion of the Public Works Director, it would cause excessive or unnecessary injury to any street tree, the Public Works Director shall have the authority to stop said maintenance and operational work and arrange with said public utility another method of maintenance or operational work satisfactory to the City.
- (c) The provisions of subsections (b) and (c) of this section shall not apply to emergency public utility maintenance work which is performed during nonworking hours for City personnel.

**7-5.10. APPEALS.**

Any person excepting to any denial, suspension or revocation by the Public Works Director of a permit applied for or held by him/her pursuant to the provisions of this chapter, or excepting to any other administrative action taken by the Public Works Director in administering the provisions of this chapter may appeal to the Council. Such an appeal shall be taken in accordance with the procedure prescribed by Chapter 4 of Title 1 of this Code.

SECTION 5. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 6. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the


City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3366-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> day of November, 2004, Councilmember Hawn, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_



JEAN ZAHR City Clerk

Effective Date: December 23, 2004

ORDINANCE NO. 3367-C.S.

AN ORDINANCE AMENDING SECTIONS 10-2.2006 AND 10-2.2009 OF ARTICLE 20 OF CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE RELATING TO OFF-STREET PARKING REQUIREMENTS; AND SECTION 10-2.2314 OF ARTICLE 23 OF CHAPTER 2 OF TITLE 10 OF THE MODESTO MUNICIPAL CODE RELATING TO GENERAL PROVISIONS. (REORGANIZATION OF DEPARTMENTS)

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Sections 10-2.2006 and 10-2.2009 of Article 20 of Chapter 2 of Title 10 of the Modesto Municipal Code are hereby amended to read as follows:

**10-2.2006. LANDSCAPING.**

All parking area landscaping shall be designed to the following standards:

- (a) Whenever a parking area abuts a street, a perimeter landscape strip shall be provided pursuant to the landscape setback provisions of the base zoning district in conformance with Chapter 1, Landscaping and Irrigation Standards (MMC Sections 12-1.01 - 12-1.09). There shall be a minimum of a four (4) foot by five (5) foot planting area for each tree planted in a landscaped planter. Dimensions are measured from the interior side of the curb or permanent border as approved by the Parks, Recreation and Neighborhoods Director. Planter landscaping shall provide a visual landscape screen to a minimum height of three (3) feet and a maximum height of four (4) feet. Visual screening may be accomplished solely by landscaping or in conjunction with a decorative masonry wall. All screening shall conform to the clear vision triangle regulations (Section 10-2.2314 of this Code).
- (b) In the interior of a parking area, areas shall be designated for tree planting. Each tree planting area shall contain a minimum of one (1) deciduous tree planted with a minimum of fifteen (15) gallon sized stock. The Street Tree Plan, Appendix E, "General Tree Species List," a copy of which is on file in the City Clerk's office, shall be used for recommendations. Trees selected shall be approved by the Public Works Director and Parks,

Recreation and Neighborhoods Director. There shall be (a minimum of) one (1) tree planted for every eight (8) parking spaces. Tree planting areas shall be distributed throughout the parking area to achieve a fifty (50) percent surface shading within ten (10) years of issuance of the Certificate of Occupancy. For parking areas with only one (1) aisle parking lot shade trees may be planted along the periphery. To qualify as a parking lot shade tree, the tree must be located within seven and one-half (7.5) feet of a parking space.

#### **10-2.2009. TEMPORARY PARKING LOTS DOWNTOWN.**

- (a) Modified Standards. If an off-street parking area meets the qualifications set forth below, the following modifications in standards may be made, subject to approval by the Planning Commission:
  - (1) The minimum width of each parking space shall be eight (8) feet, four (4) inches.
  - (2) The turnaround or end driveway width shall be a minimum of thirteen (13) feet.
  - (3) The surface may be a sand-asphalt pavement.
  - (4) Storm drainage to be approved by the Public Works Director may allow up to one-half of the parking area to drain across the adjacent sidewalks with the balance permitted to drain to an adjacent alley.
  - (5) No landscaping is required.
- (b) Qualifications. To qualify as a temporary parking lot downtown, all of the following conditions shall be met:
  - (1) The property shall be entirely within the Downtown P-D Zone area.
  - (2) None of the spaces shall be required by this Code, including but not limited to joint use parking by covenant and common parking.
  - (3) The maximum term shall be five (5) years from date of issuance of a building permit for the temporary parking lot.

- (c) Plot Plan. The applicant shall provide a complete plot plan to assist the evaluation of the proposed lot. The plot plan shall include but not be limited to:
  - (1) The location of all proposed buildings, facilities and open space.
  - (2) The location of on-site vehicular and pedestrian circulation.
  - (3) The location of all off-street parking.
  - (4) The location of all land to be dedicated to or reserved for public use.
  - (5) The location and extent of street improvements as determined in consultation with the Public Works Director.
  - (6) All dimensions pertinent to any requirement of the Municipal Code.
- (d) Time Extension. A maximum five (5) years' additional use of a temporary parking lot may be granted for good and sufficient reasons by the Commission after four (4) years of use.

**SECTION 2. AMENDMENT OF CODE.** Section 10-2.2314 of Article 23 of

Chapter 2 of Title 10 of the Modesto Municipal Code is hereby amended to read as follows:

**10-2.2314. VISION OBSTRUCTIONS.**

- (a) In zones requiring a front yard, there shall be a clear vision triangle on all corner lots. The triangle is an area bounded by the front and side street property lines and a line connecting them twenty-five (25) feet from their intersection. Within the triangle, the area between three (3) and eight (8) feet in height measured from the top of the curb adjacent to the front yard shall be clear. Trees may penetrate the clear area as long as there are no branches lower than eight (8) feet and the trunk does not constitute a hazard to vehicular or pedestrian traffic as determined by the Public Works Director. If no curb exists, the City Engineer shall establish curb grade.
- (b) In addition to obstructions in subsection (a) of this section above, the Public Works Director may require the removal of landscaping or structures on any lot which in his/her opinion constitute a hazard to vehicular or pedestrian traffic.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3367-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> day of November, 2004, Councilmember Hawn, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED:   
MAYOR JIM RIDENOUR

ATTEST:   
JEAN ZAHR, City Clerk

Effective Date: December 23, 2004

ORDINANCE NO. 3368-C.S.

AN ORDINANCE AMENDING SECTIONS 11-1.01, 11-1.04, 11-1.05, 11-1.06, 11-1.08, 11-1.14, 11-1.15 AND 11-1.16 OF CHAPTER 1 OF TITLE 11 OF THE MODESTO MUNICIPAL CODE RELATING TO WATER RATES AND REGULATIONS; SECTION 11-4.27 OF CHAPTER 4 OF TITLE 11 OF THE MODESTO MUNICIPAL CODE RELATING TO PROCEDURE FOR GRANTING CABLE COMMUNICATION SYSTEM FRANCHISES; SECTIONS 11-5.05, 11-5.07 AND 11-5.11 OF CHAPTER 5 OF TITLE 11 OF THE MODESTO MUNICIPAL CODE RELATING TO REGULATIONS AND PROCEDURES FOR THE REMOVAL OF OVERHEAD UTILITY FACILITIES AND THE INSTALLATION OF UNDERGROUND FACILITIES IN UNDERGROUND UTILITY DISTRICTS; AND SECTIONS 11-6.05, 11-6.06, 11-6.08, 11-6.10, 11-6.11 AND 11-6.13 OF CHAPTER 6 OF TITLE 11 OF THE MODESTO MUNICIPAL CODE RELATING TO COLLECTIONS OF PUBLIC UTILITIES CHARGES. (REORGANIZATION OF DEPARTMENTS)

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Sections 11-1.01, 11-1.04, 11-1.05, 11-1.06, 11-1.08, 11-1.14, 11-1.15 and 11-1.16 of Chapter 1 of Title 11 of the Modesto

Municipal Code are hereby amended to read as follows:

**11-1.01. MANAGEMENT AND SYSTEM.**

The management, control and care of the municipal water system of the City shall be vested in the Public Works Director under the general direction of the City Manager.

**11-1.04. WATER SERVICE INSTALLATION CHARGES.**

Water service installation charges shall be paid by consumers and shall be in accordance with a schedule approved by the Council from time to time by resolution.

The Public Works Director is hereby authorized to waive the water service installation charges and require water services to be installed in conjunction with the subdivision of land by developers of subdivisions.

- (a) **Water System Fee.** When a property connects to the City water system, consumers shall pay a proportionate share towards the construction and maintenance of the City water system. Payment shall be in accordance with a schedule approved by the Council from time to time by resolution.
- (b) **Payment of Water System Fee.** In the case of new subdivisions or parcel maps, this charge shall be paid at the time of filing the final subdivision or parcel map. If no parcel or subdivision map is required for the development of the property, then the fee shall be collected upon the issuance of the building permit.

#### **11-1.05. WATER MAIN CONNECTION CHARGES.**

In addition to the water service installation charges imposed by Section 11-1.04 of this chapter, and in case of metered services, the meter costs imposed by Section 11-1.06 of this chapter, water main connection charges shall be paid in accordance with this section.

- (a) **Territory Within the City.** For water service in all areas within the City, the water main connection charge to existing mains shall be in accordance with a schedule approved by the Council from time to time by resolution.
- (b) **Territory Outside the City.** For water services in territory outside the City limits, the water main connection charge to existing mains shall be in accordance with a schedule approved by the Council from time to time by resolution. The City Manager shall have the authority to grant any request for water service to property outside the City limits, upon recommendation of the Public Works Director. In considering applications for furnishing water service to property located outside the City limits, the City Manager may impose such reasonable conditions to the granting of such privilege as the City Manager deems to be in the best interest of the City. City Manager shall establish the conditions and City Council shall approve said conditions from time to time by resolution. Any agreements for the provision of such water service shall be approved as to form by the City Attorney.
- (c) **Main Extensions.** Where water main extensions are required before water service can be provided outside the City, the City may require an agreement with the person desiring water service which shall provide the basis upon which water mains will be constructed and financed. Such an agreement, among other things, may include the requirement of annexation of any territory so served to the City at the earliest opportunity.

- (d) **Allocation of Costs.** Notwithstanding the provisions of subsections (a) and (b) above, the Public Works Director is hereby authorized to approve and process applications for water service to portions of parcels of land in accordance with the rates specified in the above subsections subject to all of the following terms and conditions:
- (1) That the property involved can reasonably be served by the municipal water system.
  - (2) The total area of such parcels of land to be served shall be not less than twenty thousand (20,000) square feet, and the portion of the parcel to be served shall not be less than six thousand (6,000) square feet in area.
  - (3) A fee shall be paid to the City and shall accompany the application for the purpose of covering the costs of inspection of the premises to make the determination specified in subsections (d)(1) and (2) above, and said fee shall be in accordance with a schedule approved by the Council from time to time by resolution.
  - (4) Connection fees shall be payable based on the size of the portion of the parcel to be served and shall be paid in accordance with the applicable provisions of the Municipal Code.
  - (5) Water service fees shall be payable in accordance with the Municipal Code provisions relating to water service generally.
  - (6) The portion of the area to be served shall be recorded by means of a sketch map on the water service card filed in the Public Works Department.
  - (7) In addition to the remedies for violations of the provisions of this Code, as an additional and alternate remedy, the Public Works Director shall have the authority to immediately discontinue water service without requirement of notification in the event that the Director shall determine that water supplied to serve the area under the permit is used on other premises.
- (e) **Water Mains Installed by Developers.** Notwithstanding the charges set forth in subsections (a) and (b) of this section, the Public Works Director is hereby authorized to waive the square footage portion of the water main connection charge and require water mains to be installed in conjunction with the subdivision of land by the developers of subdivisions as follows:

- (1) All water mains shall be sized in accordance with current City of Modesto Standard Specifications.
  - (2) All six (6) inch and eight (8) inch diameter mains and appurtenances thereto, such as, but not necessarily limited to, fire hydrants, blowoffs, valves and valve boxes shall be furnished and installed by the developer.
  - (3) All ten (10) inch and larger water mains and all water pumping stations shall be furnished and installed by the City.
  - (4) The cost of installation of all fire hydrants, whether connected to water mains installed by the developer or by the City, shall be the responsibility of the developer. Where fire hydrants are installed by the City, the developer shall pay to the City a fee for such installation, the amount of which shall be established by the City Council from time to time by resolution.
- (f) **Water Connection Charges to Subdivisions.** Normally all water mains smaller than ten (10) inches in inside diameter, and appurtenances thereto, will be installed by the developers of subdivisions as set forth in subsection (e)(3) of this section. From time to time, however, in its best interest, the City may elect to install all water mains, and appurtenances thereto, in a particular subdivision.

In the event the City so elects to install all water mains, and appurtenances thereto, water service shall be provided only if the developer of said subdivision agrees that if the water main connection charges set forth in subsections (a), (b) and (c) of this section have not been paid for eighty (80) percent of all lots within said subdivision within three (3) years and ninety (90) days from the date of recordation of the final map, or within three (3) years of the completion of installation of the waterlines by the City, whichever is the longer period of time, the developer or his/her assignees shall forthwith pay to City water main connection charges for all lots for which said fees have not been paid. Notwithstanding the provisions of this subsection, the City may enter into special agreements with developers of industrial subdivisions which shall provide the basis upon which water mains shall be constructed and financed.

#### **11-1.06. METERED SERVICES.**

- (a) All hotels, lodging houses, single-family dwellings located within the City's outlying water systems, multiple-family dwellings, campgrounds, office buildings, eating houses, commercial establishments, industrial

plants, theaters, hospitals, laundries, dance halls, warehouses, bus stations, milk plants, manufacturing establishments, service stations, wash racks, cooling systems and any or all other places offering services to the public or commodities for sale, as well as owners of gardens using water for irrigation of flowers and vegetables to be used commercially, must be equipped with meters and shall be charged for water on the metered rate as specified in Section 11-1.07 of this chapter.

- (b) New single-family dwellings issued a building permit on or after October 1, 1991, within the City of Modesto water system shall be equipped with a meter but shall not be charged for water on a metered rate.
- (c) Where clusters of single-family dwellings are located on a single parcel of property, service may be provided by a metered connection for each individual unit or a single metered connection serving all units under one (1) ownership.
- (d) All buildings of any kind whatsoever, whether industrial, commercial or residential, heretofore or hereafter equipped with water using heat pumps or refrigeration units shall be equipped with meters and shall be charged for water on the metered rate as specified in Section 11-1.07 of this chapter.
- (e) Each swimming pool and bathing pool heretofore or hereafter constructed shall be metered except those located on residential property and equipped with a filtering system meeting the standards approved by the Community Development Director; provided, further, that every swimming pool and bathing pool heretofore or hereafter constructed which is used commercially or by a closed membership association or corporation shall be metered. The connection fee and water rates for pools required to be metered shall be as provided for other metered connections.
- (f) For all metered services, the City will furnish, install and maintain all meters, with the consumer to pay the cost of the meter and installation. The cost of meters and installation shall be in accordance with a schedule approved by the Council from time to time by resolution and on file in the offices of the City Clerk, Public Works Director and Finance Director. In the case of existing meters under the ownership of the consumer, the City will assume responsibility for maintenance and replacement of the meters upon receipt of transfer of title from the owner. Said title shall be in a form satisfactory to the Public Works Director.

- (g) Except as provided in Section 11-1.06(d) and 11-1.14(a) single-family dwellings issued a building permit prior to October 1, 1991, shall not be required to have metered services.

#### **11-1.08. USE OF FIRE HYDRANTS REGULATED.**

When it is necessary to use water temporarily in connection with any type of construction or other operation at a place where the water supply is inadequate for such purposes, application may be made to the Finance Department for a permit to use water from a fire hydrant. No person shall use water from, or connect any apparatus to, a fire hydrant without first obtaining a permit.

Each permit shall specify the terms and conditions of use and the fire hydrant or hydrants authorized to be used. No person shall attach to the operating stem or cap of a fire hydrant any wrench or tool that is not approved by the Public Works Department for use on fire hydrants. In addition to any other remedy available to the City, any wrench, connecting apparatus, valve, hose, or other item attached to a fire hydrant in violation of this section shall be subject to removal and confiscation by the City.

#### **11-1.14. RULES AND REGULATIONS.**

In addition to all other provisions and requirements of this chapter, the Council may, from time to time by resolution, establish additional rules and regulations concerning the operation of the municipal water system, the use of water, and water conservation. These provisions shall apply to all persons using water in the City regardless of whether any person using water shall have a contract for water service with the City. Failure to comply with any provision, requirement, rule, or regulation under this Chapter shall be unlawful and may be punishable as an infraction.

- (a) Should the Public Works Director, or his/her designee, determine that any water user has committed acts which violate the regulations of the Drought Contingency Plan, as provided by resolution, the water user and property owner shall be notified in the following manner:
  - (1) Shall be served with a Notice of Violation either personally, by mail, or by posting such notice at the person's business or place of residence. Such notice shall:
    - (aa) Identify the date, time, and circumstances of violation.

- (ab) Notify that further violations may result in penalty fees being assessed.
- (2) Should a water user violate the regulations of the Drought Contingency Plan after being served with a Notice of Violation, that water user and property owner shall be served with a Notice of Intention to Impose a Penalty. Said notice shall:
  - (aa) Identify the date, time, and circumstances of violation.
  - (ab) State the amount of penalty to be imposed.
  - (ac) Advise the water user or property owner of his or her appeal rights as provided herein.

The Notice of Intention to Impose a Penalty shall be served in the same manner as the Notice of Violation.

- (3) After a Notice of Intention to Impose a Penalty is served, a penalty shall be assessed to the utility account of the water user in an amount as set by Council resolution from time to time. Penalties will be assessed for violations occurring within a one (1) year time period and will be progressive in nature. The penalty may be collected in the same manner as any unpaid water service charges.
- (4) A water user or property owner shall have the right to appeal either the Notice of Violation or the imposition of the penalty assessed to his/her utility account. The water user or property owner must request an appeal hearing in writing within fifteen (15) days from the date of service of the Notice of Violation; or within fifteen (15) days of the service of the Notice of Intention to Impose a Penalty. The request for hearing shall be addressed to the Public Works Director and shall be deemed served only when received by the City. Failure to properly serve the request for hearing within the fifteen (15) day period shall be deemed a waiver of the right to appeal the matter, and the penalty will be assessed against the customer's account.
- (5) The appeal hearing shall be held before the Public Works Director, or his/her designee, who shall make a factual finding on the existence of a violation in this matter. The water user or property owner shall be allowed to present such witnesses and evidence as he or she may desire and may be represented by an attorney or

other representative of his or her choosing. The hearing officer shall give written notice by mail to the water user of the date and time of the appeal hearing. Said hearing shall not be held sooner than ten (10) days from receipt of the request for hearing and not longer than thirty (30) days. The decision of the hearing officer shall be final. If a violation is found the penalty shall be assessed to the customer's account.

- (6) The City Council hereby designates the Water Division personnel as the persons authorized to investigate violations and to serve any notices required by the provisions of this subsection.
- (b) All water services installed shall have a wheel valve where the service pipe enters the house and/or structure.
- (c) No person shall supply water in any way for use outside of the premises to which the service is assigned or appurtenant except by permission from the Public Works Director.
- (d) Access to service connections and water meters must be provided at all times.
- (e) All persons must keep the service pipes in good order at their own expense and may be held liable for damages which may result from their failure to do so. When leaky faucets or fixtures are discovered and not immediately repaired, the water service may be disconnected. Authorized employees of the City of Modesto shall be admitted at all reasonable hours to all parts of any premises supplied with water, except the interior of dwellings, but including the meter box, to see that the regulations contained in this chapter are observed and complied with.
- (f) It shall be unlawful for any person to interfere with the City service lines, valves or meters or to construct a bypass around a meter or service.
- (g) In making plumbing connections, the water user shall comply with the regulations of the State and County Department of Public Health. Such regulations prohibit (1) unprotected cross-connections between a public supply and any unapproved source of water and (2) water service to premises where there is a possibility of contaminated water backflowing into the public water system. In addition, approved backflow assembly devices shall be installed on water services when (1) another source of water, whether cross-connected or not, is in use or is available for use; or (2) contaminating liquid substances of any kind are used, produced or

processed. The Cross Connection Specialist shall determine the type, design and layout of backflow prevention devices required at each premises; and the devices shall be installed at the expense of the consumer. The control devices shall be inspected, tested and approved by the Cross Connection Specialist as a condition of service to the premises.

- (h) Regulations of the California State Department of Public Health require the owner of any premises on or for which backflow prevention devices are installed to inspect these devices for water tightness and tested for reliability at least once per year or more often depending on conditions. Approved backflows and other protective devices may, in addition, be inspected and tested for water tightness by the City at any time. If the inspection cannot be made without undue difficulty because of an obstruction or other interference, the consumer will be notified and requested either to correct the condition or have the inspection made at his/her own expense and witnessed by the City. Inspections and testing shall be done by persons certified with the State of California as a Backflow Prevention Assembly Tester.
  - (1) The City shall notify the water user of the inspection findings, listing the corrective actions to be taken if any are required. A period of thirty (30) days will be given to complete all corrective actions required, including the installation of backflow assembly devices.
  - (2) A second notice will be sent to each water user who does not take the corrective actions prescribed in the first notice within the thirty (30) days allowed. The second notice will give the water user an additional thirty (30) day period to take the required action. If no action is taken within the thirty (30) days, the City may terminate water service to the affected water user until the corrective action is taken. The City shall reserve the right to complete the corrective actions at the water user's expense.
- (i) When the City finds water uses that represent a clear and immediate hazard to the potable water supply that cannot be immediately abated, the City shall institute the procedure for discontinuing water service. Conditions or water uses that create a basis for water service termination shall include, but are not limited to, the following items:
  - (1) Refusal to install a required backflow assembly device,
  - (2) Refusal to test a backflow assembly device,

- (3) Refusal to repair a faulty backflow assembly device,
- (4) Refusal to replace a faulty backflow assembly device,
- (5) Direct or indirect connection between the public water system and a sewer line,
- (6) Unprotected direct or indirect connection between the public water system and a system or equipment containing contaminants,
- (7) Unprotected direct or indirect connection between the public water system and an auxiliary water system,
- (8) A situation which presents an immediate health hazard to the public water system.

For conditions 1-4, the City will terminate service to the customer's premise after two (2) written notices have been sent specifying the corrective action needed and the time period in which it must be done. If no action is taken within the allowed time period, water service may be terminated.

For conditions 5-8, the City will take the following steps: (1) Make reasonable effort to advise water user of intent to terminate water service; and (2) Terminate water supply and lock service valve. The water service will remain inactive until correction of violations has been approved by the City's Cross Connection Specialist.

- (j) Independent fire sprinkler systems and private fire hydrant systems shall have a "double-check backflow assembly" installed in the service. If the Cross Connection Specialist determines that an independent fire sprinkler system or private fire hydrant system is being used for other than fire prevention and suppression purposes, he/she may install an appropriate backflow assembly. The cost of such installation shall be paid by the consumer.
- (k) When a water connection fee is paid for a particular parcel, it shall be credited to subsequent owners of that parcel. Refunds shall be made for duplicate payments. Additional fees will be required where there are zoning, use or density changes that will increase the fees.

**11-1.15. INTERPRETATION.**

The Public Works Director is hereby empowered to make interpretations of this chapter whenever a question may arise as to the necessity for, type of manner or method in which materials, meters or backflow control devices shall be installed. Said interpretation shall be in writing, and a copy thereof shall be filed in the office of the Director.

**11-1.16. RECORDS.**

The Public Works Director shall keep complete records of all permits issued and other official work performed under the provisions of this chapter.

SECTION 2. AMENDMENT OF CODE. Section 11-4.27 of Chapter 4 of Title 11 of the Modesto Municipal Code is hereby amended to read as follows:

**11-4.27. TREE TRIMMING.**

Grantee, in order to maintain its facilities, including its overhead wires and cables or its underground conduits, may trim trees on public property. Tree trimming and pruning shall be done in accordance with the guidelines established by the International Society of Arboriculture ("ISA"), which are the industry standard, or, if the City adopts its own standards, the City's then current adopted standards shall apply. Tree pruning shall be performed by a business licensed for tree pruning work by the State of California, and all work shall be performed under the supervision of an arborist certified by ISA or the City. Except in cases of emergencies, at least twenty-four (24) hours prior to beginning any work that will affect any tree on public property or any street tree, Grantee shall notify Grantor's Public Works Department and obtain permission from Grantor's Public Works Department. Grantee shall not begin work until its plans and procedures have been approved by the Public Works Department. Grantee and Grantor may agree to other procedures different from those set forth herein or may agree to a blanket permit to expedite tree trimming.

SECTION 3. AMENDMENT OF CODE. Sections 11-5.05, 11-5.07 and 11-5.11 of Chapter 5 of Title 11 of the Modesto Municipal Code are hereby amended to read as follows:

**11-5.05. EXCEPTION, EMERGENCY OR UNUSUAL CIRCUMSTANCES.**

Notwithstanding the provisions of this chapter, overhead facilities may be installed and maintained for a period, not to exceed ten (10) days, without authority of the Public Works Director in order to provide emergency services. The Public Works Director may grant special permission, on such terms as the Public Works Director may deem appropriate, in cases of unusual circumstances, without discrimination as to any person or utility, to erect, construct, install, maintain, use or operate poles, overhead wires and associated overhead structures.

**11-5.07. OTHER EXCEPTIONS.**

This chapter and any resolution adopted pursuant to Section 11-5.03 hereof shall, unless otherwise provided in such resolution, not apply to the following types of facilities.

- (a) Any municipal facilities or equipment installed under the supervision and to the satisfaction of the Public Works Director.
- (b) Poles or electroliers used exclusively for street lighting.
- (c) Overhead wires (exclusive of supporting structures) crossing any portion of a District within which overhead wires have been prohibited, or connecting to buildings on the perimeter of a district, when such wires originate in an area from which poles, overhead wires and associated overhead structures are not prohibited.
- (d) Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building without crossing any public street.
- (e) Antenna, associated equipment and supporting structures, used by a utility for furnishing communication services. "Communication services" does not include community antenna television systems.
- (f) Equipment appurtenant to underground facilities, such as pedestal mounted terminal boxes and concealed ducts.

**11-5.11. RESPONSIBILITY OF PROPERTY OWNERS.**

- (a) Every person owning, operating, leasing, occupying or renting a building or structure within a District shall perform construction and provide that portion of the service connection on his/her property between the facilities

referred to in Section 11-5.08 hereof and the termination facility on or within said building or structure being served, all in accordance with applicable rules, regulations and tariffs of the respective utility or utilities on file with said utility or utilities or with the Commission. If the above is not accomplished by any person within the time provided for in the resolution enacted pursuant to Section 11-5.03 hereof, the Public Works Director shall give notice in writing to the person in possession of such premises, and a notice in writing to the owner thereof as shown on the last equalized assessment roll, to provide the required underground facilities within ten (10) days after receipt of such notice.

- (b) The notice to provide the required underground facilities may be given either by personal services or by mail. In case of service by mail on either of such persons, the notice must be deposited in the United States mail in a sealed envelope with postage prepaid, addressed to the person in possession of such premises at such premises, and the notice must be addressed to the owner thereof as such owner's name appears, and must be addressed to such owner's last known address as the same appears on the last equalized assessment roll, and when no address appears, to General Delivery, City of Modesto. If notice is given by mail such notice shall be deemed to have been received by the person to whom it has been sent within forty-eight (48) hours after the mailing thereof. If notice is given by mail to either the owner or occupant of such premises, the Public Works Director shall, within forty-eight (48) hours after the mailing thereof, cause a copy thereof, printed on a card not less than eight (8) inches by ten (10) inches in size, to be posted in a conspicuous place on said premises.
- (c) The notice given by the Public Works Director to provide the required underground facilities shall particularly specify what work is required to be done, and shall state that if said work is not completed within thirty (30) days after receipt of such notice, the Public Works Director will provide such required underground facilities, in which case the cost and expense thereof will be assessed against the property benefitted and become a lien upon such property.
- (d) If upon the expiration of the thirty (30) day period, the said required underground facilities have not been provided, the Public Works Director shall forthwith proceed to do the work; provided, however if such premises are unoccupied and no electric or communications services are being furnished thereto, the Public Works Director shall in lieu of providing the required underground facilities, have the authority to order the disconnection and removal of any and all overhead service wires and

associated facilities supplying utility service to said property. Upon completion of the work by the Public Works Director , he/she shall file a written report with the City Council setting forth the fact that the required underground facilities have been provided and the cost thereof, together with a legal description of the property against which such cost is to be assessed. The Council shall thereupon fix a time and place for hearing protests against the assessment of the cost of such work upon such premises, which said time shall not be less than ten (10) days thereafter.

- (e) The Public Works Director shall forthwith, upon the time for hearing such protests having been fixed, give a notice in writing to the person in possession of such premises, and a notice in writing thereof to the owner thereof, in the manner hereinabove provided for the giving of the notice to provide the required underground facilities, of the time and place that the Council will pass upon such report and will hear protests against such assessment. Such notice shall also set forth the amount of the proposed assessment.
- (f) Upon the date and hour set for the hearing of protests, the Council shall hear and consider the report and all protests, if there be any, and then proceed to affirm, modify or reject the assessment.
- (g) If any assessment is not paid within five (5) days after its confirmation by the Council, the amount of the assessment shall become a lien upon the property against which the assessment is made by the Public Works Director and the Public Works Director is directed to turn over to the Assessor and Tax Collector a notice of lien on each of said properties on which the assessment has not been paid, and said Assessor and Tax Collector shall add the amount of said assessment to the next regular bill for taxes levied against the premises upon which said assessment was not paid. Said assessment shall be due and payable at the same time as said property taxes are due and payable, and if not paid when due and payable, shall bear interest at the rate of six percent (6) per annum.

SECTION 4. AMENDMENT OF CODE. Sections 11-6.05, 11-6.06, 11-6.08, 11-6.10, 11-6.11 and 11-6.13 of Chapter 6 of Title 11 of the Modesto Municipal Code are hereby amended to read as follows:

**11-6.05. CHARGES FOR METERED WATER SERVICE.**

Charges for water delivered through a meter shall be paid to the City in accordance with rates and charges as established by the Council from time to time by resolution and on file in the office of the City Clerk and the Public Works Director. Charges for metered service will be due and payable upon presentation of the bill, and no advance or partial payments of such charges will be accepted by the City without consent of the Finance Director.

**11-6.06. CHARGES FOR UNMETERED WATER SERVICE.**

Charges for water delivered from an unmetered service shall be paid to the City in accordance with rates and charges as established by the Council from time to time by resolution and on file in the office of the City Clerk and the Public Works Director. Charges for unmetered service will be due and payable upon presentation of the bill, and no partial payments of such charges will be accepted by the City without consent of the Finance Director.

**11-6.08. WATER CHARGES FOR USE OF FIRE HYDRANTS.**

Water used from a fire hydrant shall be metered when practicable, as determined by the Public Works Director, with the meter to be provided by the City. Unmetered water shall be charged at the metered rate, based upon City estimates of the quantity of water use, and such estimates shall be conclusive. The charges shall be in accordance with a schedule approved by the Council from time to time by resolution.

**11-6.10. SEWER SERVICE CHARGES.**

Each person owning property within the sewer district shall pay a sewer service charge to the City in accordance with rates and charges as established by the Council from time to time by resolution and on file in the office of the City Clerk and the Public Works Director. In the case of common areas for multi-dwelling complexes, such as laundromats, offices, recreation rooms and pool areas each unit shall be charged as a dwelling unit. Charges for sewer service to properties shall commence upon completion or occupancy of a building, whichever date shall occur first.

On premises served with City water, the charge for sewer service shall be added to the charge for water service and payment of the total amount must be made in accordance with this chapter.

On premises not served with City water, the billing of services shall be made insofar as practicable in accordance with provisions of this chapter relating to charges for flat rate water service; or if not practicable, they shall be as determined by the Finance Director.

#### **11-6.11. STORM DRAINAGE SEWER SURCHARGE.**

The City of Modesto is implementing activities to improve the environmental quality of storm water by decreasing the amount of organic material, dirt, toxins and pesticides that enter the system. Each person owning property within the City limits shall pay a storm drainage sewer surcharge to the City in accordance with rates and charges as established by the Council from time to time by resolution and on file in the office of the City Clerk and the Public Works Director. The surcharge is based on the size and intensity of use of property and shall go to pay the costs of improving the storm water generated by the property. The surcharge shall be added to the charge for sewer service and payment of the total amount shall be made in accordance with this chapter.

The Council shall have the power to establish, by agreement or resolution, the rate or rates to be charged and the method of collecting the surface water runoff sewer surcharge for properties outside the City limits for those properties which discharge into the City's storm drain system.

#### **11-6.13. CHARGES FOR GARBAGE SERVICE.**

- (a) Maximum charges to classes of customers, for example, residential, commercial and industrial customers, for garbage service may be established by Council from time to time by resolution and placed on file in the office of the City Clerk and Public Works Director.
- (b) Below maximum charges for garbage service shall be as determined by the collector for each customer class and shall not be subject to City review and mediation.
- (c) The Council may impose a separate solid waste recycling program charge. If such a charge is imposed, it shall be added to the charge for garbage service collected by collector and transmitted to the City. The method of accounting for the amount of such recycling program charges collected by the collector and the time and manner of transmitting them to the City shall be as determined by the Finance Director.

For residential premises receiving water/sewer bills, charges for garbage service may appear on the same bill.

For nonresidential and residential premises not connected to the municipal water/sewer systems, the collector shall bill and collect all garbage service charges, including any recycling charge. Recycling charge shall be accounted for and transmitted to the City as determined by the Finance Director.

SECTION 5. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 6. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3368-C.S.

FINAL ADOPTION CLAUSE

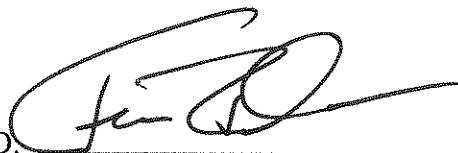
The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> day of November, 2004, Councilmember Hawn, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_



JEAN ZAHR, City Clerk

Effective Date: December 23, 2004

ORDINANCE NO. 3369-C.S.

AN ORDINANCE AMENDING SECTION 12-1.03 OF CHAPTER 1 OF TITLE 12 OF THE MODESTO MUNICIPAL CODE RELATING TO LANDSCAPING AND IRRIGATION STANDARDS; AND SECTIONS 12-4.203 AND 12-4.204 OF ARTICLE 2 OF CHAPTER 4 OF TITLE 12 OF THE MODESTO MUNICIPAL CODE RELATING TO USE OF PARK AND RECREATION AREAS AND FACILITIES.  
(REORGANIZATION OF DEPARTMENTS)

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 12-1.03 of Chapter 1 of Title 12 of the Modesto Municipal Code is hereby amended to read as follows:

**12-1.03. STANDARDS OF LANDSCAPE DESIGN.**

- (a) **Plan preparation.** It is required that a licensed landscape architect, landscape contractor, architect, or engineer, be employed in preparing the landscape and irrigation plans. In addition to plants, the use of structural elements like pools, fountains, raised planters, benches and sunshades are encouraged but not required in the landscape plan.

Prior to plan preparation, the Public Works Director should be contacted for street tree information to ensure the landscape plantings will not interfere with the City's tree planting plan. Underground Service Alert and Modesto Irrigation District should also be contacted to avoid conflict with existing or proposed utility lines or appurtenances.

- (b) **Plant materials.** The selection of plant materials should include both evergreen and deciduous trees, shrubs, and attractive erosion-preventing ground cover. It is required that at least ninety (90) percent of the plants selected in non-turf areas be well suited to the climate of the region and require minimal water once established in the landscape. Up to ten (10) percent of the plants may be of a non-drought-tolerant variety as long as they are grouped together and can be irrigated separately. Attention shall be given to appearance, height, spread, growth rate, moisture requirements, potential root damage, disease, and pest susceptibility, climatic adaptability, soil type slope, function, and degree of maintenance required.

- (c) **Plant coverage.** Plants shall be so spaced and sized that, when mature, they will fill the planter area. Although a reasonable number of growing seasons will be allowed for full plant coverage to develop, interim ground cover shall be provided during this period. Interim cover of surfacing materials shall consist of rocks, gravel, wood mulch or chips, or any other acceptable material. Mulches must be a minimum of three (3) inches thick when used as an interim measure.
- (d) **Plant maintenance.** Underground automated irrigation systems shall be provided to assure efficient water use with a minimum of labor and water waste. Irrigation controllers must have multiple-cycle capabilities and include a rain-sensing override device. Plant material must be maintained in a healthy condition. Unhealthy plants shall be replaced. Planters shall be kept free of all weeds, debris and trash.
- (e) **Planter construction.** All planter islands shall have a peripheral concrete or permanent border as approved by the Parks, Recreation and Neighborhoods Director to prevent cars and pedestrians from damaging plant materials. All planters constructed adjacent to buildings or structures shall be designed so as to avoid irrigation water intrusion into or on that adjacent building or structure. The minimum width of a planter bed shall be four (4) feet measured from the inside of curbing or permanent border.
- (f) **Compacted soils.** Prior to the planting of any materials, the compacted soils surrounding a building site shall be cultivated or amended to a friable condition. "Friable condition" shall mean cultivation or amendment of the soil to an easily crumbled or loosely compacted condition down to a minimum depth per planting material requirements, whereby the root structure of newly planted material will be allowed to spread unimpeded.

SECTION 2. AMENDMENT OF CODE. Sections 12-4.203 and 12-4.204 of

Article 2 of Chapter 4 of Title 12 of the Modesto Municipal Code are hereby amended to read as follows:

**12-4.203. PARKING FOR DISABLED PERSONS.**

- (a) The Public Works Director is hereby authorized to reserve and designate parking for disabled persons and disabled veterans at all parks and recreation facilities owned or operated by the City.

- (b) No persons shall stop, stand or park in any space designated for parking for disabled persons unless their vehicle displays a disabled person's license plate or placard, or a disabled veteran's license plate or placard, as provided by the Vehicle Code of the State of California.

**12-4.204. SKATEBOARD FACILITIES OWNED OR OPERATED BY THE CITY.**

- (a) In any skateboard park or facility owned or operated by the City, any person riding a skateboard, in-line skates, or similar device shall wear a helmet, elbow pads and knee pads.
- (b) The Parks, Recreation and Neighborhoods Department shall cause a sign or signs to be posted at all such parks or facilities providing reasonable notice of subsection (a) of this section and stating that any person failing to comply with subsection (a) of this section will be guilty of an infraction and subject to citation.
- (c) Any person who fails or refuses to comply with the provisions of this section and who is injured while using the park or facility shall be deemed negligent.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 9th day of November, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember O'Bryant, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: 

JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3369-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 23<sup>rd</sup> day of November, 2004, Councilmember Hawn, moved its final adoption, which motion being duly seconded by Councilmember Marsh, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: Dunbar

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: December 23, 2004

**ORDINANCE NO. 3370-C.S.**

**AN ORDINANCE AMENDING SECTIONS 11-1.04 AND 11-1.06 OF CHAPTER 1 OF TITLE 11 OF THE MODESTO MUNICIPAL CODE RELATING TO WATER RATES AND REGULATIONS, AND AMENDING CHAPTER 6 OF TITLE 11 OF THE MODESTO MUNICIPAL CODE RELATING TO COLLECTIONS OF PUBLIC UTILITIES CHARGES.**

The Council of the City of Modesto does ordain as follows:

**SECTION 1. AMENDMENT OF CODE.** Sections 11-1.04 and 11-1.06 of

Chapter 1 of Title 11 of the Modesto Municipal Code are hereby amended to read as follows:

**11-1.04. WATER SERVICE INSTALLATION CHARGES.**

Water service installation charges shall be paid by consumers and shall be in accordance with a schedule approved by the Council from time to time by resolution.

The Public Works Director is hereby authorized to waive the water service installation charges and require water services to be installed in conjunction with the subdivision of land by developers of subdivisions.

- (a) **Connection Charge.** When a property connects to the City water system, consumers shall pay a proportionate share towards the construction and maintenance of the City water system. Payment shall be in accordance with a schedule approved by the Council from time to time by resolution.
- (b) **Payment of Connection Charge.** In the case of new subdivisions or parcel maps, this charge shall be paid at the time of filing the final subdivision or parcel map. If no parcel or subdivision map is required for the development of the property, then the fee shall be collected upon the issuance of the building permit.

**11-1.06. METERED SERVICES.**

- (a) All hotels, lodging houses, single-family dwellings located within the City's outlying water systems, multiple-family dwellings, campgrounds, office buildings, eating houses, commercial establishments, industrial plants, theaters, hospitals, laundries, dance halls, warehouses, bus stations, milk plants, manufacturing establishments, service stations, wash racks,

cooling systems and any or all other places offering services to the public or commodities for sale, as well as owners of gardens using water for irrigation of flowers and vegetables to be used commercially, must be equipped with meters as soon as possible and shall be charged for water on the metered rate as specified by resolution of the City Council.

- (b) New single-family dwellings issued a building permit on or after October 1, 1991, within the City of Modesto water system shall be equipped with a meter.
- (c) Where clusters of single-family dwellings are located on a single parcel of property, service may be provided by a metered connection for each individual unit or a single metered connection serving all units under one (1) ownership.
- (d) All buildings of any kind whatsoever, whether industrial, commercial or residential, heretofore or hereafter equipped with water using heat pumps or refrigeration units shall be equipped with meters and shall be charged for water on the metered rate as specified by resolution of the City Council.
- (e) Each swimming pool and bathing pool heretofore or hereafter constructed shall be metered except those located on residential property and equipped with a filtering system meeting the standards approved by the Community Development Director; provided, further, that every swimming pool and bathing pool heretofore or hereafter constructed which is used commercially or by a closed membership association or corporation shall be metered. The connection fee and water rates for pools required to be metered shall be as provided for other metered connections.
- (f) For all metered services, the City will furnish, install and maintain all meters, with the consumer to pay the cost of the meter, installation and maintenance. The cost of meters and installation shall be in accordance with a schedule approved by the Council from time to time by resolution and on file in the offices of the City Clerk, Public Works Director and Finance Director. In the case of existing meters under the ownership of the consumer, the City will assume responsibility for maintenance and replacement of the meters upon receipt of transfer of title from the owner. Said title shall be in a form satisfactory to the Public Works Director.

SECTION 2. AMENDMENT OF CODE. Chapter 6 of Title 11 of the Modesto

Municipal Code is hereby amended to read as follows:

**CHAPTER 6. COLLECTIONS OF PUBLIC UTILITIES CHARGES**

**11-6.01. MANAGEMENT AND ADMINISTRATION OF FUNDS.**

The Finance Director or a designee shall be in control of collections of all moneys due the City for utility service charges including water, sewer and storm drain services under the general direction of the City Manager. The Finance Director shall pay the same into the City Treasury and account for the same in the same manner as sums paid into the Treasury and accounts for other funds received in an official capacity.

**11-6.02. DEPOSITS FOR UTILITY SERVICES.**

An advance deposit for utility services, as may be established from time to time by resolution duly adopted by the Council, shall be required for each service based solely on credit worthiness of the consumer; except that if the Finance Director is of the opinion that a larger deposit is required in order to protect the interests of the City, the Director may require a deposit that does not exceed twice the estimated average periodic bill or three times the estimated average monthly bill. Said advance deposit shall not be required upon proof of credit worthiness satisfactory to the Finance Director.

Said advance deposit may be applied toward the nonpayment of the utility services charges upon delinquency and subsequent scheduling for disconnection of services for nonpayment, at the time of discontinuance of service or upon reaching credit worthiness satisfactory to the Finance Director. If said deposit is applied to a delinquent account, service shall not be resumed on such account until such time as the deposit is replaced to the satisfaction of the Finance Director.

**SEC. 11-6.03. PERSONS RESPONSIBLE FOR PAYMENT OF UTILITY SERVICES CHARGES.**

Owners of real property shall be responsible for utility services charges for said services used on their premises, although payments will be accepted from tenants. In case payments are not in accordance with this chapter, the services may be disconnected and shall not be restored until the delinquent charges, including any reconnection fee, and costs of collection, including reasonable attorney's fee, shall

have been paid; except where a new owner of record or a new tenant has taken up residence since the delinquent charges were incurred.

**11-6.04. WATER SERVICE CHARGES.**

Charges for water shall be charged to every service connected to the municipal water system and shall commence upon expiration of construction water period or installation of a meter.

**11-6.05. CHARGES FOR METERED WATER SERVICE.**

Charges for water delivered through a meter shall be paid to the City in accordance with rates and charges as established by the Council from time to time by resolution and on file in the office of the City Clerk and the Public Works Director. Charges for metered service will be due and payable upon presentation of the bill, and no advance or partial payments of such charges will be accepted by the City without consent of the Finance Director.

**11-6.06. CHARGES FOR UNMETERED WATER SERVICE.**

Charges for water delivered from an unmetered service shall be paid to the City in accordance with rates and charges as established by the Council from time to time by resolution and on file in the office of the City Clerk and the Public Works Director. Charges for unmetered service will be due and payable upon presentation of the bill, and no partial payments of such charges will be accepted by the City without consent of the Finance Director.

**11-6.07. EXCESSIVE WATER UTILITY USERS.**

Excessive water utility users as determined pursuant to the Water Shortage Contingency Plan adopted from time to time by City's Council shall be subject to accelerated metering in accordance with that Plan.

**11-6.08. WATER CHARGES FOR USE OF FIRE HYDRANTS.**

Water used from a fire hydrant shall be metered when practicable, as determined by the Public Works Director, with the meter to be provided by the City. Unmetered water shall be charged at the metered rate, based upon City estimates of the quantity of water use, and such estimates shall be conclusive. The charges shall be in accordance with a schedule approved by the Council from time to time by resolution.

#### **11-6.9. SEWER SERVICE CHARGES.**

Each person owning property within the sewer district shall pay a sewer service charge to the City in accordance with rates and charges as established by the Council from time to time by resolution and on file in the office of the City Clerk and the Public Works Director. In the case of common areas for multi-dwelling complexes, such as laundromats, offices, recreation rooms and pool areas each unit shall be charged as a dwelling unit. Charges for sewer service to properties shall commence upon completion or occupancy of a building, whichever date shall occur first.

On premises served with City water, the charge for sewer service shall be added to the charge for water service and payment of the total amount must be made in accordance with this chapter.

On premises not served with City water, the billing of services shall be made insofar as practicable in accordance with provisions of this chapter relating to charges for flat rate water service; or if not practicable, they shall be as determined by the Finance Director.

#### **11-6.10. STORM DRAINAGE SEWER SURCHARGE.**

The City of Modesto is implementing activities to improve the environmental quality of storm water by decreasing the amount of organic material, dirt, toxins and pesticides that enter the system. Each person owning property within the City limits shall pay a storm drainage sewer surcharge to the City in accordance with rates and charges as established by the Council from time to time by resolution and on file in the office of the City Clerk and the Public Works Director. The surcharge is based on the size and intensity of use of property and shall go to pay the costs of improving the storm water generated by the property. The surcharge shall be added to the charge for sewer service and payment of the total amount shall be made in accordance with this chapter.

The Council shall have the power to establish, by agreement or resolution, the rate or rates to be charged and the method of collecting the surface water runoff sewer surcharge for properties outside the City limits for those properties which discharge into the City's storm drain system.

#### **11-6.11. GARBAGE SERVICE CHARGES.**

All places or premises within the City shall have sufficient containers to hold all garbage generated, produced or accumulated on the place or premises during a one (1) week period in accordance with Chapter 5 of Title 5.

#### **11-6.12. CHARGES FOR GARBAGE SERVICE.**

- (a) Maximum charges to classes of customers, for example, residential, commercial and industrial customers, for garbage service may be established by Council from time to time by resolution and placed on file in the office of the City Clerk and Public Works Director.
- (b) Below maximum charges for garbage service shall be as determined by the collector for each customer class and shall not be subject to City review and mediation.
- (c) The Council may impose a separate solid waste recycling program charge. If such a charge is imposed, it shall be added to the charge for garbage service collected by collector and transmitted to the City. The method of accounting for the amount of such recycling program charges collected by the collector and the time and manner of transmitting them to the City shall be as determined by the Finance Director.

For residential premises receiving water/sewer bills, charges for garbage service may appear on the same bill.

For nonresidential and residential premises not connected to the municipal water/sewer systems, the collector shall bill and collect all garbage service charges, including any recycling charge. Recycling charge shall be accounted for and transmitted to the City as determined by the Finance Director.

#### **11-6.13. COLLECTION PROCEDURES.**

In addition to all other provisions and requirements of this chapter, the Council may, from time to time by resolution, establish additional rules and regulations concerning the collections of moneys that may become due the City for utility service charges including water, sewer and storm drain services. These provisions shall apply to all persons using said services in the City regardless of whether any person using said services shall have a contract for utility services with the City. Failure to comply with any provision, requirement, rule or regulation under this chapter shall be unlawful and may be punishable as an infraction.

- (a) Bills for unmetered utility services shall be issued on a monthly basis for utility services in the month immediately preceding the billing cycle in which they are issued. The utility bills are due and payable upon presentation; and if they are not paid at the end of the cycle in which they are billed, they shall be considered delinquent. If they are delinquent for more than ten (10) days and a delinquent notice pursuant to Sections

10009 and 10009.1 of the Public Utilities Code issued by the Finance Director has been delivered to the user or posted on the premises, a delinquent charge shall be added to the regular service charges; and water/sewer service shall be subject to being disconnected. If the water/sewer service is disconnected because of nonpayment, the water/sewer service shall not be reconnected until the amount of the delinquent bill, including the delinquent charges and an additional charge for reconnection, is paid except where a new owner has acquired title or a new tenant has taken up residence since the delinquent bill was incurred. In case of a previous tenant leaving a delinquent bill, the City may require that subsequent service be furnished under the name of the owner of real property or his or her agent. The delinquent charge and reconnection charge shall be in accordance with a schedule approved by the Council from time to time by resolution.

- (b) Bills for metered utility services shall be issued for the month immediately preceding the date of the meter reading and shall be due and payable upon presentation. If the utility bills are not paid at the end of the cycle in which they are billed, they shall be considered delinquent, and the same procedure and charges as for unmetered service shall apply.
- (c) The utility service charges herein specified will be charged against vacant or untenanted buildings unless notice of the vacancy and a request for the discontinuance of service is made to the office of the Finance Director.
- (d) All unpaid accounts for utility services delivered at any premise shall be a lien against the real property.

**11-6.14. MANAGEMENT AND ADMINISTRATION OF UNCOLLECTIBLE UTILITY SERVICE CHARGES AND REFUNDS OF COLLECTED UTILITY FUNDS.**

- (a) The Finance Director or designee (Director) shall have the discretion to write-off utility service charges that the Finance Director deems uncollectible or refund utility service charges of any type.
- (b) In order to receive a refund, a City-utility customer must:
  - (1) File a sufficient claim within two (2) years of the questioned payment on a form provided by the Director, unless waived by the Director.

- (2) Satisfy the Director both: (i) That the refund is appropriate, and (ii) That the claimant was the utility user of record who paid the funds subject to refund.
- (3) Refunds may be requested either in cash or account credit.

**11-6.15. MANAGEMENT AND COLLECTION OF GARBAGE SERVICE CHARGES BY CITY-LICENSED GARBAGE COMPANIES.**

Only Sections 11-6.11 and 11-6.12, above, and this section of Chapter 6, shall apply to garbage collectors.

- (a) The City may contract with any collector to provide garbage invoice services for compensation, but the City shall not use its police powers or other authority to assist any collector with bill collection.
- (b) Owners of real property shall ultimately be responsible for garbage service charges, deposits, penalty charges, and associated administrative charges, if any, for services to their premises.
- (c) Garbage service charges may be billed directly to tenants/lessees or owners of real property. The following billing/collection procedures shall apply to collectors, tenants/lessees, and property owners:
  - (1) Billing for all garbage services including services for prorated (less than one (1) month) periods, shall be monthly or bimonthly, and upon completion of the first month's garbage service in the event billing is bimonthly. Licensees shall give thirty (30) days= written notice to tenants/lessees and property owners, and sixty (60) days= written notice to the City of Modesto prior to changing their billing cycle from monthly to bimonthly or from bimonthly to monthly.
  - (2) Each collector may collect a deposit equivalent to two (2) months' service charge from a tenant/lessee or property owner prior to directing its billing to that tenant/lessee or property owner. At the property owner's option, the property owner may pay all or a portion of the deposit on behalf of a tenant/lessee. The collector shall credit the account of any tenant/lessee or property owner in the full amount of the deposit, in the event the tenant/lessee or property owner shall not have been issued more than two (2) notices as provided in subsection (b)(3) of this section, within eighteen (18) months of initiation of service.

- (3) In the event a tenant/lessee or property owner fails to pay a collector's bill, tendered in accordance with the foregoing, within thirty (30) days after that bill is mailed to the tenant/lessee or property owner, the collector shall be obligated to do the following:
- (i) Mail notice of the delinquency to the tenant/lessee or property owner, which notice will include an administrative charge, sufficient to defray the cost of the notice to the collector, as established from time to time by the City Council. The notice shall include a statement that the delinquent sum is immediately due and is subject to a penalty fee if there are unpaid charges still owed collected sixty (60) days after the original billing date. The notice shall also state that collector may discontinue service if there are unpaid charges still owed sixty (60) days after the original billing date.
  - (ii) Simultaneously mail a copy of the notice to both the tenant/lessee and to the property owner.
  - (iii) Collector is not required to continue to provide service to any customer whose service has been discontinued due to nonpayment.
  - (iv) Collector is not required to start or restart service at any address where service has been discontinued due to nonpayment until such time as all previous charges, penalty fees, administrative charges and appropriate deposit are paid or other arrangements have been agreed to between the collector and the customer.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the

City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 23rd day of November, 2004, by Councilmember Dunbar, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, Mayor Ridenour  
NOES: Councilmembers: O'Bryant  
ABSENT: Councilmembers: None

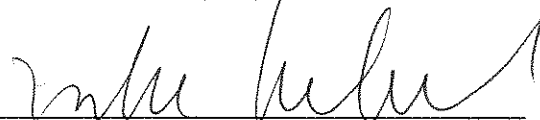
APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3370-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of December, 2004, Councilmember Dunbar moved its final adoption, which motion being duly seconded by Councilmember Jackman, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh,

NOES: Councilmembers: O'Bryant

ABSENT: Councilmembers: Mayor Ridenour

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: January 6, 2005

ORDINANCE NO. 3371-C.S.

AN ORDINANCE AMENDING SECTION 3-2.1401.1 OF ARTICLE 14 OF CHAPTER 2 OF TITLE 3 OF THE MODESTO MUNICIPAL CODE RELATING TO SPEED LIMITS.

The Council of the City of Modesto does ordain as follows:

SECTION 1. AMENDMENT OF CODE. Section 3-2.1401.1 of Article 14 of Chapter 2 of Title 3 of the Modesto Municipal Code is hereby amended to read as follows:

**3-2.1401.1. CHANGE IN SPEED LIMITS SET BY STATE LAW: FOR PURPOSE OF ENFORCEMENT USING RADAR OR OTHER ELECTRONIC DEVICE.**

By authority of, and upon the basis of engineering and traffic surveys conducted pursuant to Vehicle Code and the Traffic Manual of the Department of Transportation, it is determined that the prima facie speed limits which follow would facilitate the orderly movement of vehicular traffic and would be reasonable and safe.

<u>NAME OF STREET OR PORTION AFFECTED</u>	<u>DECLARED PRIMA FACIE SPEED LIMIT</u>	<u>DATE SURVEYED</u>
BANGS AVENUE, between Dale Road and McHenry Avenue	45 miles per hour	September 4, 2000
BLUE GUM AVENUE, between Morse Road and Carpenter Road	35 miles per hour	March 19, 2003
BRIGGSMORE AVENUE, between Prescott Road and Tully Road	45 miles per hour	May 6, 2003
BRIGGSMORE AVENUE, between Tully Road and McHenry Avenue	45 miles per hour	September 2, 2004
BRIGGSMORE AVENUE, westbound between McHenry Avenue and Coffee Road	45 miles per hour	May 6, 2003

BRIGGSMORE AVENUE, eastbound between McHenry Avenue and Coffee Road	45 miles per hour	May 10, 2002
BRIGGSMORE AVENUE, between Coffee Road and Oakdale Road	50 miles per hour	May 6, 2003
BRIGGSMORE AVENUE, between Oakdale Road and Claus Road	50 miles her hour	February 26, 2003
BRIGGSMORE AVENUE, between Claus Road and Santa Fe Railroad Tracks	45 miles per hour	May 22, 2002
BRIGHTON AVENUE, between Coffee Road and Locke Road	30 miles per hour	May 10, 2002
CALIFORNIA AVENUE, between Carpenter Road and Martin Luther King Drive	30 miles per hour	July 11, 2002
CARPENTER ROAD, between Blue Gum Avenue and Woodland Avenue	40 miles per hour	February 21, 2003
CARPENTER ROAD, between Woodland Avenue and Maze Boulevard	40 miles per hour	September 4, 2000
CARPENTER ROAD, between Maze Boulevard and Paradise Road	50 miles per hour	August 25, 2004
CARVER ROAD, between Bangs Avenue and Pelandale Avenue	40 miles per hour	September 4, 2000
CARVER ROAD, between Pelandale Avenue and Brixton Lane	35 miles per hour	May 10, 2002
CARVER ROAD, between Brixton Lane and Briggsmore Avenue	35 miles per hour	May 10, 2002

CARVER ROAD, between Briggsmore Avenue and Orangeburg Avenue	35 miles per hour	May 10, 2002
CARVER ROAD, between Orangeburg Avenue and 9th Street	35 miles per hour	May 10, 2002
CELESTE DRIVE, between Coffee Road and Oakdale Road	30 miles per hour	May 17, 2002
CLAUS ROAD, between Sylvan Avenue and Briggsmore Avenue	50 miles per hour	May 23, 2002
CLAUS ROAD, between Briggsmore Avenue and Scenic Drive	45 miles per hour	May 23, 2002
CLAUS ROAD, between Scenic Drive and Yosemite Boulevard	50 miles per hour	September 4, 2000
COFFEE ROAD, between Claratina Avenue and Sylvan Avenue	40 miles per hour	October 7, 2004
COFFEE ROAD, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
COFFEE ROAD, between Floyd Avenue and Briggsmore Avenue	40 miles per hour	May 7, 2003
COFFEE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	February 21, 2003
COLLEGE AVENUE, between Rumble Road and Bowen Avenue	30 miles per hour	February 21, 2003
COLLEGE AVENUE, between Bowen Avenue and Princeton Avenue	35 miles per hour	February 21, 2003
COLLEGE AVENUE, between Princeton Avenue and Needham Avenue	25 miles per hour	February 21, 2003

CREEKWOOD DRIVE, between Claus Road and Yosemite Boulevard	35 miles per hour	May 7, 2003
CROWS LANDING ROAD, between 7th Street and Hatch Road	35 miles per hour	May 7, 2003
CROWS LANDING ROAD, between Hatch Road and Whitmore Avenue	35 miles per hour	May 7, 2003
DALE ROAD, between Pelandale Avenue and Snyder Avenue	40 miles per hour	September 4, 2000
DALE ROAD, between Snyder Avenue and Veneman Avenue	40 miles per hour	May 16, 2002
DALE ROAD, between Veneman Avenue and Standiford Avenue	35 miles per hour	May 16, 2002
EASTRIDGE DRIVE, between Orangeburg Avenue and Scenic Drive	30 miles per hour	June 18, 2002
EL VISTA AVENUE, between Scenic Drive and Yosemite Boulevard	40 miles per hour	May 7, 2003
EMERALD AVENUE, between Maze Boulevard and California Avenue	30 miles per hour	May 28, 2002
EVERGREEN AVENUE, between Orangeburg Avenue and Carver Road	30 miles per hour	May 21, 2002
FLOYD AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	July 11, 2002
FLOYD AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002
FLOYD AVENUE, between Oakdale Road and Roselle Avenue	35 miles per hour	July 10, 2002

FLOYD AVENUE, between Roselle Avenue and Fine Avenue	35 miles per hour	July 10, 2002
GRANGER AVENUE, between Tully Road and McHenry Avenue	35 miles per hour	May 6, 2003
GRANGER AVENUE, between McHenry Avenue and Sunrise Avenue	35 miles per hour	May 6, 2003
HATCH ROAD, between Carpenter Road and Crows Landing Road	45 miles per hour	September 4, 2000
JEFFERSON STREET, between Maze Boulevard and Paradise Road	30 miles per hour	February 19, 2004
KANSAS AVENUE, between Morse Road and Rosemore Avenue	40 miles per hour	May 6, 2003
KANSAS AVENUE, between Rosemore Avenue and Carpenter Road	40 miles per hour	May 6, 2003
KANSAS AVENUE, between Carpenter Road and Emerald Avenue	35 miles per hour	May 6, 2003
KANSAS AVENUE, between Emerald Avenue and Ninth Street	35 miles per hour	May 6, 2003
LA LOMA AVENUE, between Burney Street and Yosemite Boulevard	30 miles per hour	September 4, 2000
LAKWOOD AVENUE, between Briggsmore Avenue and Scenic Drive	35 miles per hour	February 26, 2003
LINCOLN AVENUE, between Dry Creek and Yosemite Boulevard	35 miles per hour	September 4, 2000
MABLE AVENUE, between Coffee Road and Oakdale Road	30 miles per hour	July 10, 2002

MARTIN LUTHER KING DRIVE, between Maze Boulevard and Paradise Road	30 miles per hour	June 13, 2002
MERLE AVENUE, between Oakdale Road and Roselle Avenue	30 miles per hour	February 26, 2003
MERLE AVENUE, between Roselle Avenue and Claus Road	35 miles per hour	May 13, 2003
MILLER AVENUE, between La Loma Avenue and El Vista Avenue	35 miles per hour	May 7, 2003
MITCHELL ROAD, between Finch Road and the southerly City limits	50 miles per hour	May 7, 2003
MORRIS AVENUE, between McHenry Avenue and Coffee Road	30 miles per hour	May 24, 2002
MORSE ROAD, between Blue Gum Avenue and Kansas Avenue	40 miles per hour	May 24, 2002
MT. VERNON DRIVE, between Prescott Road and College Avenue	30 miles per hour	August 25, 2004
NEECE DRIVE, between Tuolumne Boulevard and Rouse Avenue	35 miles per hour	June 13, 2002
NEEDHAM STREET, between 9th Street and L Street	35 miles per hour	June 17, 2002
NORWEGIAN AVENUE, between McHenry Avenue and Coffee Road	35 miles per hour	May 6, 2003
OAKDALE ROAD, between 1300 feet north of Mable Avenue and Sylvan Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Sylvan Avenue and Floyd Avenue	45 miles per hour	August 29, 2000
OAKDALE ROAD, between Floyd Avenue and Brigsmore Avenue	40 miles per hour	May 7, 2003

OAKDALE ROAD, between Briggsmore Avenue and Scenic Drive	40 miles per hour	May 7, 2003
ORANGEBURG AVENUE, between Briggsmore Avenue and Martin Avenue	35 miles per hour	May 21, 2002
ORANGEBURG AVENUE, between Martin Avenue and McHenry Avenue	40 miles per hour	May 23, 2002
ORANGEBURG AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Coffee Road and Oakdale Road	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Oakdale Road and Lakewood Avenue	35 miles per hour	May 22, 2002
ORANGEBURG AVENUE, between Lakewood Avenue and Claus Road	35 miles per hour	May 22, 2002
PARADISE ROAD, between Carpenter Road and Martin Luther King Drive	35 miles per hour	May 28, 2002
PARADISE ROAD, between Martin Luther King Drive and Washington Street	30 miles per hour	July 3, 2002
PELANDALE AVENUE, between Sisk Road and Dale Road	45 miles per hour	May 16, 2002
PELANDALE AVENUE, between Dale Road and Prescott Road	50 miles per hour	August 29, 2000
PELANDALE AVENUE, between Prescott Road and McHenry Avenue	50 miles per hour	June 18, 2002

PRESCOTT ROAD, between Snyder Avenue and Standiford Avenue	40 miles per hour	May 17, 2002
PRESCOTT ROAD, between Standiford Avenue and Rumble Road	40 miles per hour	May 17, 2002
PRESCOTT ROAD, between Rumble Road and Briggsmore Avenue	35 miles per hour	May 17, 2002
RIVERSIDE DRIVE, between Edgebrook Drive and Yosemite Boulevard	30 miles per hour	August 30, 2000
ROSE AVENUE, between Floyd Avenue and Briggsmore Avenue	30 miles per hour	July 11, 2002
ROSE AVENUE, between Briggsmore Avenue and Scenic Drive	30 miles per hour	July 11, 2002
ROSEBURG AVENUE, between Carver Road and Tully Road	30 miles per hour	June 13, 2002
ROSEBURG AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 24, 2002
ROSEBURG AVENUE, between McHenry Avenue and Sunrise Avenue	30 miles per hour	June 13, 2002
ROSELLE AVENUE, between Sylvan Avenue and Floyd Avenue	40 miles per hour	February 26, 2003
ROSELLE AVENUE, between Floyd Avenue and Briggsmore Avenue	45 miles per hour	November 4, 2000
ROSEMORE AVENUE, between Blue Gum Avenue and Kansas Avenue	35 miles per hour	August 30, 2000

ROUSE AVENUE, between Colorado Avenue and Neece Drive	30 miles per hour	June 13, 2002
RUMBLE ROAD, between Sisk Road and Conant Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Conant Avenue and Tully Road	30 miles per hour	May 17, 2002
RUMBLE ROAD, between Tully Road and McHenry Avenue	30 miles per hour	May 17, 2002
RUMBLE ROAD, between McHenry Avenue and Coffee Road	30 miles per hour	May 17, 2002
SANTA CRUZ AVENUE, between Yosemite Boulevard and Legion Park Drive	30 miles per hour	November 4, 2000
SCENIC DRIVE, between Burney Street and Coffee Road	35 miles per hour	June 17, 2002
SCENIC DRIVE, between Coffee Road and Oakdale Road	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Oakdale Road and Lakewood Avenue	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Lakewood Avenue and Lillian Drive	40 miles per hour	June 17, 2002
SCENIC DRIVE, between Lillian Drive and Claus Road	40 miles per hour	June 17, 2002
SIERRA DRIVE, between G Street and 7th Street	25 miles per hour	January 23, 2004
SISK ROAD, between Pelandale Avenue and Vintage Drive	45 miles per hour	October 7, 2004
SISK ROAD, between Vintage Drive and Standiford Avenue	45 miles per hour	October 7, 2004

SISK ROAD, between Standiford Avenue and Briggsmore Avenue	45 miles per hour	August 29, 2000
SNYDER AVENUE, between Dale Road and Prescott Road	30 miles per hour	May 16, 2002
SNYDER AVENUE, between Prescott Road and Tully Road	30 miles per hour	May 16, 2002
STANDIFORD AVENUE, between Sisk Road and Prescott Road	45 miles per hour	May 13, 2003
STANDIFORD AVENUE, between Prescott Road and Tully Road	40 miles per hour	August 29, 2000
STANDIFORD AVENUE, between Tully Road and McHenry Avenue	40 miles per hour	May 7, 2003
SUNRISE AVENUE, between Floyd Avenue and Lucern Avenue	30 miles per hour	May 24, 2002
SUTTER AVENUE, between Paradise Road and Robertson Road	30 miles per hour	May 7, 2003
SYLVAN AVENUE, between McHenry Avenue and Coffee Road	40 miles per hour	May 7, 2003
SYLVAN AVENUE, between Coffee Road and Oakdale Road	40 miles per hour	February 7, 2001
SYLVAN AVENUE, between Oakdale Road and Roselle Avenue	40 miles per hour	February 27, 2003
SYLVAN AVENUE, between Roselle Avenue and Claus Road	45 miles per hour	February 27, 2003
TENAYA DRIVE, between Empire Avenue and the easterly city limit on Tenaya Drive	30 miles per hour	June 18, 2002
TULLY ROAD, between Bangs Avenue and Standiford Avenue	45 miles per hour	May 21, 2002

TULLY ROAD, between Standiford Avenue and Briggsmore Avenue	35 miles per hour	May 21, 2002
TULLY ROAD, between Briggsmore Avenue and Coldwell Avenue	35 miles per hour	June 13, 2002
TUOLUMNE BOULEVARD, between Paradise Road and 7th Street	35 miles per hour	May 28, 2002
UNION AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	August 29, 2000
VENEMAN AVENUE, between Dale Road and Regency Park Drive	30 miles per hour	July 10, 2002
VIRGINIA AVENUE, between Roseburg Avenue and Needham Street	30 miles per hour	May 24, 2002
WHITMORE AVENUE, between Ustick Road and Crows Landing Road	45 miles per hour	June 18, 2002
WHITMORE AVENUE, between Crows Landing Road and Morgan Road	40 miles per hour	June 18, 2002
WOODLAND AVENUE, between Morse Road and Carpenter Road	30 miles per hour	July 11, 2002
WOODLAND AVENUE, between Carpenter Road and 9th Street	30 miles per hour	June 13, 2002
WOODROW AVENUE, between Tully Road and McHenry Avenue	30 miles per hour	May 21, 2002
5TH STREET, between L Street and Sierra Drive	25 miles per hour	May 28, 2002
6TH STREET, between M Street and Sierra Drive	30 miles per hour	May 28, 2002

7TH STREET BRIDGE, between B Street and River Road	30 miles per hour	August 30, 2000
9TH STREET, between Carpenter Road and Tully Road	45 miles per hour	June 13, 2002
9TH STREET, between Tully Road and L Street	35 miles per hour	May 23, 2002
9TH STREET, between D Street and Morton Boulevard	30 miles per hour	November 4, 2000

SECTION 2. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 3. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of December, 2004, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED: \_\_\_\_\_



JIM RIDENOUR, Mayor

ATTEST:

By Jean Zahr  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By Michael D. Milich  
MICHAEL D. MILICH, City Attorney

Ord. No. 3371-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14<sup>th</sup> day of December, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

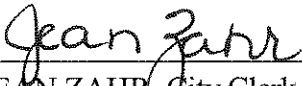
NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: January 13, 2005

ORDINANCE NO. 3372-C.S.

AN ORDINANCE AMENDING SECTION 23-3-9 OF THE ZONING MAP TO REZONE FROM LOW DENSITY RESIDENTIAL ZONE, (R-1), TO PLANNED DEVELOPMENT ZONE, P-D(569), PROPERTY LOCATED ON THE SOUTH SIDE OF SCENIC DRIVE, EAST OF SCENIC BEND. (JAMES AND SUSAN COLEMAN)

The Council of the City of Modesto does ordain as follows:

SECTION 1. ZONING CHANGE. Section 23-3-9 of the Zoning Map is hereby amended to reclassify the following described property from Low Density Residential Zone, R-1, to Planned Development Zone, P-D(569):

R-1 to P-D(569)

All that certain real property situated in the City of Modesto, County of Stanislaus, State of California, and being a portion of the Southwest Quarter of Section 23, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, more particularly described as follows:

All of Parcel "A" as per Parcel Map filed on March 1, 1972 in Book 13 of Parcel Maps, at Page 85, Stanislaus County Records.

Also including that half of Scenic Drive and that half of Scenic Bend immediately adjacent to the above described property.

SECTION 2. USES. The following uses shall be permitted in said P-D(569) Zone if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

1. Twelve custom single-family homes.

SECTION 3. ZONING MAP. Section Map 23-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of December, 2005, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

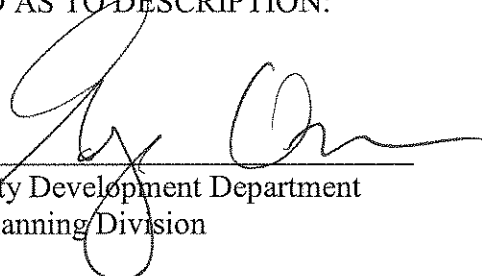
By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Planning Division

Ord. No. 3372-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14<sup>th</sup> day of December, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None


ABSENT: Councilmembers: None

APPROVED:



MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: January 13, 2005

ORDINANCE NO. 3373-C.S.

AN ORDINANCE ADOPTING A PRECISE PLAN FOR AREA NO. 23 OF THE VILLAGE ONE SPECIFIC PLAN, RELATING TO PROPERTY LOCATED AT THE WEST SIDE OF CLAUS ROAD AND NORTH OF FLOYD AVENUE. (MONTEREY DEVELOPMENT GROUP)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan is divided into 35 Precise Plan Areas and requires that a Precise Plan be approved prior to development in each Area, and

WHEREAS, an application has been filed by Monterey Development Group for adoption of a Precise Plan for Area No. 23 of the Village One Specific Plan, property located at the west side of Claus Road and north of Floyd Avenue, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on October 18, 2004, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, at which hearing evidence both oral and documentary was received and the hearing was continued to November 15, 2004, due to a notification error, and evidence both oral and documentary was received and considered, and

WHEREAS, after reviewing and considering the oral and documentary evidence, the Planning Commission, by Resolution No. 2004-67, recommended to the City Council adoption of a Precise Plan for Area No. 23 of the Village One Specific Plan, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing on December 7, 2004, at 5:30 p.m., in the Tenth Street Place Chambers located at

1010 10<sup>th</sup> Street, Modesto, California, at which hearing evidence both oral and documentary was received and considered, and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds and determines as follows:

SECTION 1. That the proposed Precise Plan for Area No. 23 of the Village One Specific Plan is required by public necessity, convenience, and general welfare for the following reasons:

1. The proposed Precise Plan for Area No. 23 is consistent with the Modesto Urban Area General Plan and the Village One Specific Plan, as amended for Precise Plans 23 and 24.

SECTION 2. APPROVAL OF PRECISE PLAN. That the City Council has reviewed and considered the Precise Plan for Area No. 23 of the Village One Specific Plan as recommended by the Planning Commission, and the Council does hereby approve said Precise Plan, a copy of which is on file in the City Clerk's Office.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of December, 2004, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

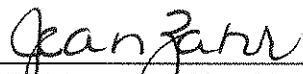
AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

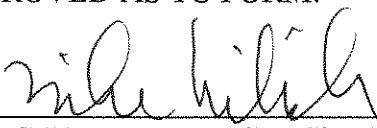
APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

Ord. No. 3373-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14<sup>th</sup> day of December, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR City Clerk

Effective Date: January 13, 2005

ORDINANCE NO. 3374-C.S.

AN ORDINANCE REZONING VILLAGE ONE PROPERTY FROM SPECIFIC PLAN-HOLDING ZONE, SP-H, TO SPECIFIC PLAN-OVERLAY ZONE, SP-O, FOR PROPERTY LOCATED AT THE WEST SIDE OF CLAUS ROAD AND NORTH OF FLOYD AVENUE. (PRECISE PLAN FOR AREA NO. 23 - MONTEREY DEVELOPMENT GROUP)

WHEREAS, the City Council on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan requires that concurrent with the review and approval of a Precise Plan, all properties included in the Precise Plan shall be rezoned to Specific Plan-Overlay Zone, SP-O, as set forth in Title 10 of the Modesto Municipal Code, and

WHEREAS, an application has been filed by Monterey Development Group for adoption of a Precise Plan for Area No. 23, property located at the west side of Claus Road and north of Floyd Avenue, and

WHEREAS, the application package also seeks rezoning of all property located within Precise Plan Area No. 23 from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on October 18, 2004, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, at which hearing evidence both oral and documentary was received and the

hearing was continued to November 15, 2004, due to a notification error, and evidence both oral and documentary was received and considered, and

WHEREAS, after public hearing, it was found and determined by the Planning Commission that rezoning of the property as requested is required by public necessity, convenience and general welfare, and

WHEREAS, by Resolution No. 2004-67, adopted November 15, 2004, the Planning Commission recommended that the application of Monterey Development Group to rezone Village One property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, for property located at the west side of Claus Road and north of Floyd Avenue, and

WHEREAS, said matter was set for a public hearing of the City Council to be held on December 7, 2004, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds and determines as follows:

SECTION 1. After a public hearing held on December 7, 2004, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, this Council finds and determines that the requested rezoning is in accordance with the General Plan and the Village One Specific Plan and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the following reason:

The rezoning to Specific Plan-Overlay Zone is required by the Village One Specific Plan concurrent with adoption of a precise plan and prior to development in the Specific Plan area.

SECTION 2. ZONING CHANGE. Section 12-3-9 of the Zoning Map of the City of Modesto is hereby amended to rezone the following described property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O:

SP-H to SP-O, PPA 23

All that certain, real property situate in a portion of the northeast quarter of Section 13, Township 3 South, Range 9 East, Mount Diablo Base and Meridian, located in the City of Modesto, County of Stanislaus, State of California; described as follows:

Beginning at the northwest corner of Parcel "D" as shown on Parcel Map recorded as Volume 32 of Parcel Maps, at Page 77, Stanislaus County Records; thence North 0°22'22" West, a distance of 1323.61 feet; thence North 89°49'34" East, a distance of 1173.11 feet; thence South 3°28'48" East, a distance of 1326.38 feet; thence South 89°51'08" West, a distance of 1245.01 feet to the point of beginning.

Containing 38.75 acres more or less.

SECTION 3. ZONING MAP. Section 12-3-9 of the Zoning Map of the City of Modesto is amended to appear as set forth on the map attached hereto, which is hereby made a part of this ordinance by reference.

SECTION 4. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 5. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*,


the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of December, 2004, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

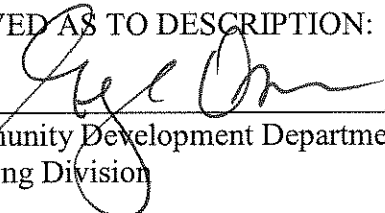
By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By   
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Planning Division

Ord. No. 3374-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14<sup>th</sup> day of December, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: 

MAYOR JIM RIDENOUR

ATTEST:

  
JEAN ZAHR, City Clerk

Effective Date: January 13, 2005

ORDINANCE NO. 3375-C.S.

AN ORDINANCE AMENDING THE PRECISE PLAN FOR AREA NO. 24 OF THE VILLAGE ONE SPECIFIC PLAN, TO AMEND THE LAND USES FROM COMMERCIAL, VILLAGE RESIDENTIAL AND MULTI-FAMILY RESIDENTIAL TO MEDIUM DENSITY RESIDENTIAL AND VILLAGE RESIDENTIAL, PROPERTY LOCATED ON THE WEST SIDE OF CLAUS ROAD AND SOUTH OF FLOYD AVENUE. (MONTEREY DEVELOPMENT GROUP)

WHEREAS, the City Council, on October 16, 1990, adopted the Specific Plan for Village One, a 1780-acre area of land adjoining the northeast portion of the City of Modesto, within its Sphere of Influence, and

WHEREAS, the Village One Specific Plan requires that precise plans be adopted prior to any development in the Village One area, and

WHEREAS, the Village One Specific Plan is divided into 35 precise plan areas, and a precise plan is required prior to development in each area, and

WHEREAS, Ordinance No. 3234-C.S. which became effective October 25, 2001, rezoned the property from Specific Plan-Holding Zone, SP-H, to Specific Plan-Overlay Zone, SP-O, and

WHEREAS, Ordinance No. 3235-C.S., which became effective on October 25, 2001, adopted a Precise Plan for Area No. 24 of the Village One Specific Plan, and

WHEREAS, an application has been filed by Monterey Development Group for an amendment to Precise Plan No. 24 to amend the land uses from Commercial, Village Residential, and Multi-Family Residential to Medium Density Residential and Village Residential, property located on the west side of Claus Road and south of Floyd Avenue, and

WHEREAS, a public hearing was held by the Planning Commission of the City of Modesto on October 18, 2004, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, at which hearing evidence both oral and documentary was received and the hearing was continued to November 15, 2004, due to a notification error, and evidence both oral and documentary was received and considered, and

WHEREAS, after reviewing and considering the oral and documentary evidence, the Planning Commission, by Resolution 2004-68, recommended to the City Council adoption of an amendment to the Precise Plan for Area No. 24 to amend the land uses from Commercial, Village Residential and Multi-Family Residential to Medium Density Residential and Village Residential, property located on the west side of Claus Road and South of Floyd Avenue, and

WHEREAS, said matter was considered by the City Council at a duly noticed public hearing on December 7, 2004, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, and evidence both oral and documentary was received and considered,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Modesto that it hereby finds and determines as follows:

SECTION 1. That said amendment to the Precise Plan for Area No. 24 is required by public necessity, convenience, and general welfare for the following reason:

That the proposed amendment to the Precise Plan for Area No. 24 is consistent with the Modesto Urban Area General Plan and the Village One Specific Plan, as amended for Precise Plans 23 and 24.

SECTION 2. ADOPTION OF AMENDMENT TO PRECISE PLAN FOR AREA NO. 24. The City Council has reviewed and considered the amendment to the Precise Plan for

Area No. 24 of the Village One Specific Plan to amend the land uses from Commercial, Village Residential and Multi-Family Residential to Medium Density Residential and Village Residential, property located on the west side of Claus Road and South of Floyd Avenue as recommended by the Planning Commission, and the Council does hereby approve said amendment to the Precise Plan for Area No. 24. A copy of said amendment is attached hereto.

SECTION 3. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

SECTION 4. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

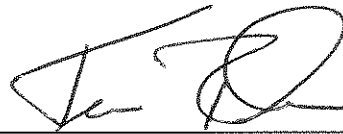
The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 7<sup>th</sup> day of December, 2004, by Councilmember Marsh, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant

NOES: Councilmembers: None

ABSENT: Councilmembers: Mayor Ridenour

APPROVED: \_\_\_\_\_



JIM RIDENOUR, Mayor

ATTEST:

By \_\_\_\_\_

  
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By \_\_\_\_\_

  
MICHAEL D. MILICH, City Attorney

Ord. No. 3375-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 14<sup>th</sup> day of December, 2004, Councilmember Jackman moved its final adoption, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_



JEAN ZAHR City Clerk

Effective Date: January 13, 2005

ORDINANCE NO. 3376-C.S.

AN ORDINANCE AMENDING SECTION 9-4-9 OF THE ZONING MAP OF THE CITY OF MODESTO TO PREZONE TO PREZONED PLANNED DEVELOPMENT ZONE, P-PD(570), APPROXIMATELY 20 ACRES OF PROPERTY LOCATED SOUTH OF GLENN AVENUE AND EAST OF CROWS LANDING ROAD. (EAGLE VALLEY INVESTMENTS, INC.)

WHEREAS, pursuant to Modesto Municipal Code Section 10-2.2604, the City of Modesto proposes to initiate a rezoning to Rezoned Planned Development Zone, P-PD(570), approximately 20 acres of property located south of Glenn Avenue and east of Crows Landing Road, and

WHEREAS, Government Code Section 56375 requires that the City rezone any area which it proposes to annex, and

WHEREAS, any rezoning designation shall remain in effect until at least two years after completion of the annexation unless the City Council, after a public hearing, determines that a substantial change in circumstances has occurred that necessitates a departure from the rezoning, and

WHEREAS, after a public hearing held on November 15, 2004, in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, it was found and determined by the Planning Commission that rezoning to Rezoned Planned Development Zone, P-PD(570), approximately 20 acres of property located south of Glenn Avenue and east of Crows Landing Road, as requested is in accordance with Government Code Section 65855 for the following reasons:

1. The proposed project will provide a needed increase in the amount of industrial land available for development;

2. New industrial development on the site will provide new employment opportunities; and
3. New industrial development on the site will increase the City's tax base; and
4. The proposed rezoning will result in orderly planning and use of land resources because future industrial development on the site will be consistent with the existing industrial area and provide the opportunity to take advantage of the existing Union Pacific Railroad line.

WHEREAS, by Resolution No. 2004-65A, adopted on November 15, 2004, the Planning Commission recommended to the City Council an amendment to Section 9-4-9 of the Zoning Map to prezone the hereafter described property to Prezoned Planned Development Zone, P-PD(570), and

WHEREAS, said matter was set for a public hearing of the City Council to be held on December 14, 2004, at 5:30 p.m., in the Tenth Street Place Chambers located at 1010 10<sup>th</sup> Street, Modesto, California, at which date and time said duly noticed public hearing of the Council was held and evidence both oral and documentary was received and considered,

NOW, THEREFORE, the Council of the City of Modesto does ordain as follows:

SECTION 1. COUNCIL FINDINGS. After a public hearing held on December 14, 2004, this Council finds and determines that the requested rezoning is in accordance with the General Plan, and will serve the public health, safety and general welfare and provide the economic and social advantages resulting from orderly, planned use of land resource for the reasons set forth in Planning Commission Resolution No. 2004-65A and quoted above.

SECTION 2. ZONING CHANGE. Section 9-4-9 of the Zoning Map is hereby amended to prezone the following described property to Planned Development Zone, P-PD(570):

A portion of the southwest quarter of Section 9, Township 4 South, Range 9 East, Mount Diablo Base and Meridian, situate in the County of Stanislaus, State of California, more particularly described as follows:

Commencing at the northeast corner of said southwest quarter of Section 9;

1. thence North 89°56'28" West along the north line of said southwest quarter of Section 9, a distance of 25.00 to the west line of the Union Pacific Railroad Right-of-Way, the existing city limit line as described in the "Modesto Industrial Park Addition to the City of Modesto" and the TRUE POINT OF BEGINNING;
2. thence South 00°19'10" East along said west line of the Union Pacific Railroad and the existing city limit line, a distance of 672.54 feet;
3. thence North 89°52'25" West along the existing city limit line of the "Whitmore No. 1 Addition to the City of Modesto" and its westerly extension, a distance of 1297.88 feet;
4. North 00°11'33" East along the city limit of "Crows Landing Road Annexation to the City of Modesto", a distance of 671.00 feet;
5. thence South 89°56'28" East along north line of the southwest quarter of Section 9 and the existing city limit line of the "Modesto Industrial Park Addition to the City of Modesto", a distance of 1296.45 feet to the point of beginning.

Contains 20.00 acres, more or less.

SECTION 3. USES. The following uses shall be permitted in said Prezoned Planned Development Zone, P-PD(570), if the plan for construction conforms in principle to the approved plan, or if changes are approved by the Secretary of the Planning Commission as required by Section 10-2.1709(c) of the Modesto Municipal Code, or by the Planning Commission if any changes not conforming in principle to the approved plan are proposed, as required by Section 10-2.1709(a) or (b) of the Modesto Municipal Code:

Uses allowed in the Heavy Industrial Zone (M-2), as described in Article 15, Section 10-2.1502, of the Modesto Municipal Code.

SECTION 4. ZONING MAP. Section 9-4-9 of the Zoning Map of the City of Modesto is hereby amended to appear as set forth on the map attached hereto and which is hereby made a part of this ordinance by reference.

SECTION 5. EFFECTIVE DATE. This ordinance shall go into effect and be in full force and operation from and after thirty (30) days after its final passage and adoption.

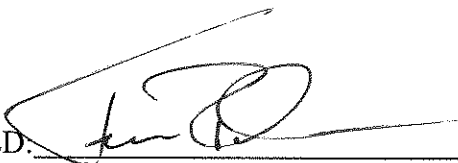
SECTION 6. PUBLICATION. At least two (2) days prior to its final adoption, copies of this ordinance shall be posted in at least three (3) prominent and distinct locations in the City; and a notice shall be published once in *The Modesto Bee*, the official newspaper of the City of Modesto, setting forth the title of this ordinance, the date of its introduction and the places where this ordinance is posted.

The foregoing ordinance was introduced at a regular meeting of the Council of the City of Modesto held on the 14<sup>th</sup> day of December, 2005, by Councilmember Jackman, who moved its introduction and passage to print, which motion being duly seconded by Councilmember Dunbar, was upon roll call carried and ordered printed and published by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant, Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED:   
JIM RIDENOUR, Mayor

ATTEST:

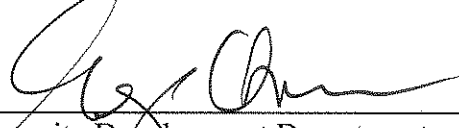
By   
JEAN ZAHR, City Clerk

(SEAL)

APPROVED AS TO FORM:

By \_\_\_\_\_  
MICHAEL D. MILICH, City Attorney

APPROVED AS TO DESCRIPTION:

By   
Community Development Department  
Planning Division

Effective Date: February 3, 2005

Ord. No. 3376-C.S.

FINAL ADOPTION CLAUSE

The foregoing ordinance, having been published as required by the Charter of the City of Modesto, and coming on for final consideration at the regular meeting of the Council of the City of Modesto held on the 4<sup>th</sup> day of January, 2005, Councilmember Dunbar, moved its final adoption, which motion being duly seconded by Councilmember Hawn, was upon roll call carried and the ordinance adopted by the following vote:

AYES: Councilmembers: Dunbar, Hawn, Jackman, Keating, Marsh, O'Bryant,  
Mayor Ridenour

NOES: Councilmembers: None

ABSENT: Councilmembers: None

APPROVED: \_\_\_\_\_



MAYOR JIM RIDENOUR

ATTEST: \_\_\_\_\_

  
JEAN ZAHR, City Clerk

Effective Date: February 3, 2005